

United States
Circuit Court of Appeals
For the Ninth Circuit.

AGNES C. JACOB, Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE, Respondent.

SHIRLEY MAY JACOB, Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE, Respondent.

BEVERLY JEAN JACOB, Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE, Respondent.

GWENDOLYN E. JACOB, Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE, Respondent.

Transcript of Record

Upon Petitions to Review Decisions of the Tax Court
of the United States

FILED

APR 10 1943

No. 10390

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

For Taxpayer:

S. J. BISCHOFF, ESQ.

For Comm'r.:

JOHN PIGG, ESQ.,

R. C. WHITLEY, ESQ.

Docket No. 108032

AGNES C. JACOB (Alleged Transferee)

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES

1941

Jul. 2—Petition received and filed. Taxpayer notified. Fee paid.

“ 2—Copy of petition served on General Counsel.

“ 19—Request for circuit hearing in Portland, Oregon filed by taxpayer. 7/21/41 copy served.

Aug. 20—Answer filed by General Counsel.

“ 22—Copy of answer served on taxpayer, Portland, Oregon.

Sep. 24—Reply to answer filed by taxpayer. 9/24/41 copy served.

Oct. 10—Hearing set Dec. 15, 1941 at Portland, Oregon.

1941

- Nov. 25—Application for subpoena duces tecum to E. W. Barnes filed by taxpayer. Subpoena issued.
- Dec. 6—Application for subpoena duces tecum to E. B. Barnes, Central Holding Co., E. W. Barnes, Pres. and James L. Conley filed by taxpayer. 12/8/41 subpoenas (4) duces tecum issued.
- “ 18-19—Hearing had before Mr. Turner on the merits. Submitted. Consolidated with dockets 108033, 34 and 35. Briefs due in 70 days—replies in 20 days.

1942

- Jan. 19—Transcript of hearing of 12/18/41 filed.
- “ 19—Transcript of hearing of 12/19/41 filed.
- Feb. 16—Brief filed by taxpayer.
- Mar. 7—Motion for leave to file the attached brief, brief lodged, filed by General Counsel. 3/11/42 granted and served 3/12/42.
- “ 12—Copy of brief served on General Counsel.
- “ 31—Motion for leave to file the attached reply brief, brief lodged, filed by taxpayer. 3/31/42 granted.
- Apr. 1—Copy of motion and reply brief served on General Counsel.
- Jul. 23—Findings of fact and opinion rendered, Turner. Decision will be entered under Rule 50. Copy served 8/4/42.
- Aug. 18—Computation of deficiency filed by General Counsel.
- “ 19—Hearing set Sept. 30, 1942 on settlement.
- Sep. 30—Hearing had before Mr. Murdock on set-

1942

tlement—not contested. Referred to Mr. Turner for decision.

Oct. 2—Decision entered, Turner, Div. 8.

Dec. 28—Petition for review by U. S. Circuit Court of Appeals for the 9th Circuit with assignments of error filed by taxpayer.

“ 28—Proof of service filed by taxpayer.

1943

Feb. 2—Statement of points filed by taxpayer with proof of service thereon. [1*]

“ 2—Agreed statement of evidence filed.

“ 8—Certified copy of order from the 9th Circuit, extending the time to 3/21/43 to prepare and transmit the record filed.

“ 25—Praecept for record filed by taxpayer.

“ 25—Affidavit of service by mail of praecept filed. [2]

United States Board of Tax Appeals

Docket No. 108032

AGNES C. JACOB (Alleged Transferee),
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above named petitioner hereby petitions for a redetermination of the proposed deficiency and

* Page numbering appearing at top of page of original certified Transcript of Record.

transferee liability set forth by the Commissioner of Internal Revenue in his notice of proposed deficiency and transferee liability dated April 8, 1941, bearing the symbols IT:90D:JW, and as a basis of her proceedings alleges as follows:

1. Petitioner is an individual residing in the City of Portland, at 3206 S. E. Knapp Street, Portland, Multnomah County, Oregon. The returns of the Central Holding Company for the periods here involved (taxable year ended June 30, 1938) was filed with the Collector for the District of Oregon.

2. The notice of the deficiency (a copy of which is attached hereto), was mailed to the petitioner under date of April 8, 1941.

3. The taxes in question, in the total sum of \$4901.30, were determined by the Commissioner of Internal Revenue as assessable against the Central Holding Company, an Oregon corporation, alleged transferor, [3] for the fiscal year ended June 30, 1938, as follows:

Income Tax	\$2,693.68
Excess-Profits Tax	\$2,207.62
	<hr/>
Total	\$4,901.30

4. The determination of taxes as set forth in the said notice of deficiency and the proposed imposition of the alleged transferee liability upon this petitioner are based upon the following errors:

(a) The respondent erred in determining that petitioner is a "transferee or a transferee of a

transferee of the property of the Central Holding Company.”

(b) The respondent further erred in determining that the petitioner received assets of the value of \$4901.30 from the Central Holding Company, taxpayer, or any sum whatsoever.

(c) The respondent further erred in determining that the alleged deficiency described in the aforesaid notice of deficiency was determined by the United States Board of Tax Appeals, Docket No. 99258.

(d) The Respondent further erred in determining that Central Holding Company (the taxpayer) was liquidated during the year 1937.

(e) The respondent further erred in determining that there was distributed to and among the stockholders of Central Holding Company (taxpayer), assets of the company during the year 1937 as part of such alleged liquidation. [4]

(f) The respondent further erred in determining that petitioner received assets or property of the Central Holding Company (taxpayer) at said time or at any time either by reason of the alleged distribution of corporate assets to and among the stockholders or by reason of a gift or other transfer without consideration and the Commissioner erred in determining that petitioner received any assets of the said corporation at any time under any circumstances.

(g) The respondent further erred in failing and refusing to determine that all questions of liability for tax and deficiency for the tax year ending

June 30, 1938, of the Central Holding Company and of all persons claimed to be transferees of the assets and property of the Central Holding Company was conclusively adjudicated and determined by the United States Board of Tax Appeals in the proceedings known as Docket No. 99258, and No. 99161 in which proceedings judgments were duly made and entered adjudicating the liability of any and all persons claimed by the Commissioner to be transferees of property or assets of the Central Holding Company.

(h) The respondent further erred in determining that petitioner is a transferee or a transferee of a transferee of the property of the Central Holding Company (taxpayer) and is liable as such for any tax liability of the Central Holding Company described in the aforesaid notice of deficiency.

5. The facts upon which petitioner relies as the basis of this proceeding are as follows: [5]

(a) Central Holding Company was incorporated under the laws of the State of Oregon on or about June 15, 1936, for the purpose of acquiring the real and personal property known as the Welcome Hotel, situated in Burns, Harney County, Oregon.

(b) That on or about July 1, 1936, said Central Holding Company purchased the said Welcome Hotel, took possession thereof, and commenced the operation of the business.

(c) That the said corporation was organized with capital stock consisting of 300 shares of no par value; that upon the formation of the corporation 100 shares of the capital stock of said corporation was subscribed for and issued to Robert T.

Jacob; that your petitioner did not subscribe to or become the owner of any of said capital stock at any time; that 100 shares of the capital stock of said corporation was issued to James L. Conley and 100 shares of said capital stock was issued to E. W. Barnes and Olive G. Barnes.

(d) That said corporation continued the ownership, management and control of said hotel property.

(e) That on July 15, 1937, the Welcome Hotel building and contents was partially destroyed by fire.

(f) That subsequent to said fire the said Central Holding Company decided to continue in the hotel business, either by reconstructing the hotel building which had been partially destroyed by fire, or by the acquisition of other hotel property, and to that end, its officers engaged in obtaining plans, specifications and estimates for reconstruction, negotiated for loans with which to reconstruct said hotel building and/or for the purpose of purchasing other hotel property. [6]

(g) That shortly after the said hotel building was partially destroyed by fire and prior to July 27, 1937, Robert T. Jacob and E. W. Barnes entered into an agreement by the terms of which the said Robert T. Jacob agreed to sell and E. W. Barnes agreed to purchase the 100 shares of the capital stock of the Central Holding Company issued to Robert T. Jacob as aforesaid, at an amount equal to the value thereof to be determined by an accounting; that after such accounting and as a result

thereof, Robert T. Jacob agreed to and did accept in payment of said stock the sum of \$20,422.10 which sum was paid as follows: \$2,422.10 was paid on or about August 12, 1937, and \$18,000.00 was paid on or about August 17, 1937; that said payments were made in cash by the said E. W. Barnes to the said Robert T. Jacob; that your petitioner did not receive the said sum of \$20,422.10 or any part thereof nor did your petitioner receive any assets of any kind or character from the said E. W. Barnes or from the Central Holding Company directly or indirectly in connection with said transaction or for any purpose whatsoever; that your petitioner did not at said time or at any other time have any interest in and to the capital stock of the corporation as aforesaid.

(h) That during the time between the fire and the sale of stock by Robert T. Jacob to E. W. Barnes, the Central Holding Company did negotiate for and did purchase property with the funds of the corporation to be used for hotel purposes; it investigated the purchase of numerous hotel properties offered to the corporation; it procured plans and specifications to be made and estimates to be furnished for the reconstruction of the [7] hotel property at Burns, Oregon; that on August 4, 1937, the Central Holding Company purchased the unfinished hotel structure at Hines, Harney County, Oregon, about two miles west of Burns, Oregon, together with the real property upon which the hotel property was located, to-wit:

Lots 2, 3, 4, 5, 6, and 7 in Block 98, Tract 5,

Stafford Derbes & Roy Subdivision in Harney County, Oregon,

and also lots 1 and 8 to 53, inclusive in the same block and tract of the same addition, with the funds of the corporation; that the title thereto was first taken in the name of Mr. and Mrs. E. W. Barnes and was thereafter, to-wit: on November 29, 1937, conveyed to the Central Holding Company by deed recorded on December 3, 1937, in Book 38, Page 38 of Deed Records in the office of the County Clerk of Harney County, Oregon.

(i) That long prior to November 21, 1937, Central Holding Company commenced negotiations with one, Frank Amato for the purchase from him of the hotel property known as the Arlington Hotel at Arlington, Gilliam County, Oregon, and on November 21, 1937, a contract was entered into for the purchase of said hotel building, being

Lots 8, 9, 10, and 11 in Block A Denny's Addition to the Town of Arlington, Gilliam County, Oregon, and all of Lot 11 in Block A located in J. W. Smith's Plat in the original town of Arlington.

Also Lots 12, 13, 14, and 15, except the west 50 feet thereof, all in Block A, Denny's Addition to the Town of Arlington, Gilliam County, Oregon,

including the real property and the buildings erected thereon and the personal property located therein consisting of furniture and [8] furnishings of said hotel property; that on December 15, 1937, the said Frank Amato conveyed said Arlington Hotel prop-

erty to Central Holding Company by deed dated December 15, 1937, and recorded in the office of the County Clerk of Gilliam County, Oregon, in Book 30, Page 624; that the purchase price of said property was the sum of \$50,000.00 which was paid as follows: \$15,000.00 by conveyance to Frank Amato of the real property acquired by the Central Holding Company at Hines, Oregon as aforesaid; \$23,868.92, by the execution and delivery by the Central Holding Company to Frank Amato of a purchase money mortgage on the said Arlington Hotel property; \$6313.08 in cash, and the balance by the assumption of delinquent taxes against the aforesaid property; that the conveyance was executed by the Central Holding Company and the cash payment of \$6,313.08 was made with funds of the corporation; that thereafter the Central Holding Company took possession of said hotel property, changed the name thereof to Welcome Hotel and continued to own and operate said hotel in its own name and for its own benefit until September 21, 1938, when it conveyed the said hotel property to E. W. Barnes and Olive G. Barnes, which conveyance was made by the Central Holding Company.

(j) That on August 17, 1937, when Robert T. Jacob sold the capital stock of the Central Holding Company to E. W. Barnes as aforesaid Central Holding Company was a solvent corporation and continued to be a solvent corporation thereafter and continued to be the owner of hotel property and continued to be engaged in the hotel business.

(k) That the said corporation of Central Hold-

ing Company [9] was not dissolved prior to or at the time of the sale of the stock as aforesaid or at any time thereafter.

(l) That on March 17, 1939, the Commissioner of Internal Revenue sent to Robert T. Jacob, transferee, a notice of deficiency of tax of the Central Holding Company for the fiscal tax year ending June 30, 1938, being the same tax payer and the same tax year involved in this proceeding, and proposed to assess as against the said Robert T. Jacob, a transferee liability for the said tax upon the determination made therein by the Commissioner, that the said Robert T. Jacob was a transferee of property of said Central Holding Company which said notice of deficiency bears the symbols IT:90D:GLB, a true and correct copy of which notice of deficiency together with the statement attached thereto is attached hereto and marked Exhibit "A" and made a part hereof as if herein fully and at length set forth.

(m) That thereafter the said Robert T. Jacob filed with the United States Board of Tax Appeals, a petition for the redetermination of the tax sought to be assessed against him by virtue of the said letter and notice of deficiency which petition was duly prepared and verified according to law and was filed with the United States Board of Tax Appeals within the time provided by law and was assigned Docket No. 99161, a true and correct copy of which petition is attached hereto and made a part hereof as if fully and at length set forth and is marked Exhibit "B"; that the deficiency assess-

ment referred to in the said petition in so far as it was sought to impose on Robert T. Jacob liability as transferee of assets of Central Holding Company (taxpayer), was predicated upon the receipt by [10] Robert T. Jacob of the same fund which is described in the notice of deficiency in this proceeding, to-wit; the receipt by Robert T. Jacob of the aforesaid sum of \$20,422.10 and the sum of \$4,901.30, which it is alleged in the deficiency notice in this proceeding as received by the petitioner is the same sum which was received by Robert T. Jacob as aforesaid; that thereafter on August 11, 1939, the Commissioner of Internal Revenue filed his Answer to the said last mentioned petition, a true and correct copy of which Answer is attached hereto and made a part hereof as if fully and at length set forth, and marked Exhibit "C"; that in and by said Answer the Commissioner, among other things, alleged; that thereafter said sum of \$20,422.10 which was alleged to have been distributed by Central Holding Company, was paid to the said petitioner, Robert T. Jacob and that by reason thereof the said Robert T. Jacob became liable as transferee of the property of the taxpayer, the Central Holding Company, which sum of \$20,422.10 includes the identical sum now alleged in the notice of deficiency to have been received by this petitioner herein; that thereafter and in the time required by law the said Robert T. Jacob filed his reply to the said Answer and issue having been joined in said proceeding, the said cause duly came on for trial before the United States Board of Tax

Appeals on November 29, 1939, before the Honorable C. P. Smith, member of the Board presiding; that while the said trial was in progress the parties to said proceeding stipulated in open court for the entry of a judgment therein in favor of the Commissioner of Internal Revenue and against the transferee named in [11] said proceeding, including the petitioner therein, Robert T. Jacob; that the said Robert T. Jacob stipulated in open court and said stipulation was entered of record as follows:

“Petitioner, Robert T. Jacob while denying the amount of deficiency and the liability for the transfer, admits that he is transferee and the decision may be entered against him in the amount set forth in the statement of counsel for the taxpayer.”

that based upon the said Stipulation made and entered of record in said court and cause, a decision was made and entered therein, a true and correct copy of which decision is attached hereto and made a part hereof as if fully and at length set forth and is marked Exhibit “D”; that thereafter the Commissioner of Internal Revenue filed a Motion in said proceeding to vacate the said decision and judgment and for leave to file an amended answer for the purpose of further litigating in said proceeding the liability of the said Robert T. Jacob named as transferee in said proceeding, for the original tax of Central Holding Company, taxpayer, disclosed by its return for the year ending

June 30, 1938, which is the same tax which is now made the basis of the present transferee proceeding against this petitioner; that petitioner refers to said Motion to vacate the order and decision and for leave to file an answer which is on file in this court in Docket No. 99161, and makes the same a part hereof as if herein fully and at length set forth; that the said Robert T. Jacob opposed said Motion upon the ground, among others that the decision and judgment entered in said proceeding determining his transferee liability, was based upon the Stipulation and agreement of the parties to said proceeding, together with the related proceedings consolidated and tried jointly, that the judgment to be entered upon the Stipulation was to be a full and com- [12] plete settlement and satisfaction and discharge of any and all liability of all transferees including the petitioner, Robert T. Jacob, and that such settlement was made and the said entry of judgment was consented thereto in order to buy peace and determine all controversies concerning any and all tax liability of all parties whether taxpayer or transferees and your petitioner refers to the affidavit filed in opposition to said Motion in said proceeding, Docket No. 99161, as if fully and at length set forth and the same are made a part hereof; that thereafter on the 9th day of April, 1940, the United States Board of Tax Appeals entered an Order and decision in said proceeding, Docket No. 99161, denying the aforesaid Motion, a true and correct copy of which is attached hereto and made a part hereof as if fully

and at length set forth and marked Exhibit "E"; that based upon said decision the United States Board of Tax Appeals made and entered in said proceeding, its Order denying Respondents' said Motion, a true and correct copy of which order is attached hereto and made a part hereof as if herein fully and at length set forth and marked Exhibit "F".

(n) That by virtue of the aforesaid proceedings all claims of the Commissioner of Internal Revenue, respondent herein as against petitioner and as against any and all parties that were liable or might be liable as transferees of property of Central Holding Company for the taxable year ending June 30, 1938, were fully settled and compromised, adjudicated and determined and by reason thereof the respondent is estopped to assert or litigate any claim against any person whomsoever, including the petitioner herein, for liability as transferee or transferee of a transferee for any tax liability of the [13] Central Holding Company, taxpayer, for the aforesaid taxable year;

(o) That after the entry of the aforesaid judgments in the aforesaid proceedings, Robert T. Jacob, named as transferee therein, paid in full to the respondent, the amount of the judgments rendered therein, together with all interest that accrued thereon and the said judgments have been satisfied of record and by reason thereof there is no longer any liability on the part of anyone, including this petitioner for the tax assessed against

Central Holding Company, taxpayer, for said taxable year.

(p) That petitioner did not receive from Robert T. Jacob either as gift or otherwise, the sum of money set forth in the Notice of Deficiency, to-wit; \$4901.30, or any sum of money or any property or assets that were at any time the property of Central Holding Company;

(q) That at or about the time that Robert T. Jacob subscribed for the shares of capital stock as aforesaid, Robert T. Jacob promised to make a gift of said capital stock to your petitioner who is the wife of the said Robert T. Jacob and to Shirley May Jacob, Beverly Jean Jacob and Gwendolyn E. Jacob, daughters of Robert T. Jacob, in equal shares as and when said stock could lawfully be issued; that neither the corporation itself nor Robert T. Jacob could issue the said stock as aforesaid because the corporation and Robert T. Jacob were under contract with one, Robert S. Farrell, that the said stock should be held in the name of Robert T. Jacob until a certain indebtedness to the said Robert S. Farrell could be liquidated; that the said indebtedness was not liquidated until after the partial destruction of the hotel as aforesaid and was paid out of the money obtained from the [14] insurance company in settlement of said loss; that because of said oral promise made as aforesaid the said Robert T. Jacob was in doubt as to whether he was the true owner of said stock *or whether he was the true owner of said stock* or whether he held the same in trust for your petitioner and the said

members of his family; that by reason of said doubt the said Robert T. Jacob in making his own tax return for said year, treated himself as being the owner of said stock and reported as revenue, the receipt of the \$20,422.10, and paid to the Commissioner of Internal Revenue, income tax thereon, but the said Robert T. Jacob attached to said return, a statement setting forth the promise made to this petitioner and the other members of his family, to transfer said stock to them and called attention to the doubt created thereby; that in order to fully inform the Commissioner of Internal Revenue as to the question of ownership of said stock your petitioner and the other members of the family of said Robert T. Jacob each filed income tax returns during that year in which said sum of \$20,422.10, although petitioner did not in fact receive any part thereof, and your petitioner and the other members of the family of Robert T. Jacob paid income tax thereon; that thereafter the Commissioner of Internal Revenue after making a full, complete and extensive examination of the facts relative to the ownership of the said stock, determined that your petitioner and the other said members of the family of Robert T. Jacob were not the owners of said stock and that Robert T. Jacob was in law and equity the owner thereof, that your petitioner and the other members of the family were not stockholders and were not liable for any tax and the Commissioner of Internal [15] Revenue refunded to your petitioner and other members of the family of Robert T. Jacob, the income tax paid by them

are aforesaid; that with the knowledge of all of the aforesaid facts the respondent elected to treat Robert T. Jacob as the owner in law and in equity of the aforesaid stock and the money received in payment thereof and served on the said Robert T. Jacob as transferee, the Notice of Deficiency, dated March 17, 1939, heretofore referred to as Exhibit "A", attached hereto; that in the proceeding, Docket No. 99161 filed by Robert T. Jacob alleged Transferee, as aforesaid, marked Exhibit "B", the said Robert T. Jacob again set forth the facts in reference to the ownership of said stock, but notwithstanding said allegations the respondent by his answer served and filed in said proceeding, again elected to treat the said Robert T. Jacob as the owner in law and equity of said stock and the monies received in payment thereof and to treat the said Robert T. Jacob as the transferee and with knowledge of all of the facts the respondent stipulated in said proceeding in open court that Robert T. Jacob was the transferee as aforesaid and judgment was entered therein on said transferee liability against the said Robert T. Jacob and by reason of the premises respondent has made an irrevocable and conclusive election to treat the said Robert T. Jacob as the owner of said stock in law and in equity and of the funds received in payment thereof and as the transferee of assets of the said Central Holding Company. [16]

Wherefore, the petitioner prays that this Board may hear the proceeding and that it may be determined:

(a) That petitioner is not a transferee or a transferee of a transferee of any assets of the Central Holding Company;

(b) That the deficiencies determined by the respondent are erroneous.

(sd) S. J. BISCHOFF,
Counsel for Petitioner.
Post Office Address:
1116 Public Service
Building,
Portland, Oregon.

(Duly Verified.) [17]

No. 21536-O

SN-IT-1

Treasury Department
Internal Revenue Service
Seattle, Wash.

April 8, 1941.

IT:90D:JW

Mrs. Agnes C. Jacob,
3206 S. E. Knapp Street,
Portland, Oregon.

Madam:

You are advised that there will be assessed against you the amount of \$2,693.68, income tax, and the amount of \$2,207.62, excess-profits tax, plus interest as provided by law, constituting your liability as transferee of assets of Central Holding Company, 1226 American Bank Building, Portland,

Oregon, for unpaid income and excess-profits taxes in the above amounts, plus interest as provided by law, due from said Central Holding Company for the taxable year ended June 30, 1938, as shown in the statement attached.

* * * * *

Respectfully,

GUY T. HELVERING,

Commissioner,

By (Signed) GEO. C. EARLEY,

Internal Revenue Agent in
Charge.

Enclosures:

Statement.

Form of waiver.

JW :sm [19]

STATEMENT

Central Holding Company, Transferor,
1226 American Bank Building,
Portland, Oregon

Tax Liability for the Taxable Year Ended June 30, 1938
Mrs. Agnes C. Jacob, Transferee,
3206 S. E. Knapp Street,
Portland, Oregon.

Income Tax (Original, per return).....		\$3,163.80
Excess-profits tax (Original, per re- turn)		2,844.02
Income tax deficiency	\$1,875.48	
Less: Amount paid	800.66	1,074.82
		<hr/>
Excess-profits tax deficiency	\$ 1,098.88	
Less: Amount paid	469.13	629.75
		<hr/>
Total unpaid income and excess- profits taxes		\$7,712.39

Liability limited to the value of assets received:

Income tax	\$2,693.68
Excess-profits tax	2,207.62
	<hr/>
Total.....	\$4,901.30

Inasmuch as the value of assets received by you amounted to \$4,901.30, your liability as transferee is limited to that amount.

The correctness of the amount of the deficiencies due from Central Holding Company, 1226 American Bank Building, Portland, Oregon, has been determined by order of the United States Board of Tax Appeals, Docket No. 99258. Your right to petition, therefore, relates only to your liability as transferee. [20]

The records of this office indicate that the Central Holding Company, an Oregon corporation, was liquidated during the year 1937, at which time all the assets of that company were distributed to and among its stockholders, and that you received assets or property of that company, either by reason of such distribution of the corporate assets to and among the stockholders, or by reason of a gift, or other transfer without consideration, from a stockholder of that company, to the extent or in the value of \$4,901.30. Said amount of \$4,901.30 represents your liability, exclusive of interest as provided by law, under Section 311 of the Revenue Act of 1936, as a transferee, or as a transferee of a transferee of the property of the Central Holding Company, for unpaid income taxes and excess-

profits taxes due and owing from that company for the fiscal year ended June 30, 1938. [21]

EXHIBIT A

No. 21536-O

SN-IT-1

Treasury Department
Internal Revenue Service
Seattle, Wash.

March 17, 1939

IT:90D:GLB

Mr. R. T. Jacob, Transferee,
917 Public Service Building,
Portland, Oregon.

Sir:

You are advised that the determination of the income tax liability of Central Holding Company, Portland, Oregon, for the year ended June 30, 1937, discloses a deficiency of \$3,930.34 and \$1,965.17 in penalty, and that the determination of its excess-profits tax liability for such year discloses a deficiency of \$1,382.16 and \$691.08 in penalty, and that the determination of such company's income and excess-profits tax liabilities for the year ended June 30, 1938, discloses deficiencies in the respective amounts of \$1,875.48 and \$1,098.88 as shown by the attached statement, which deficiencies and penalties plus interest as provided by law, it is proposed to assess against you as transferee of the assets of said

corporation, in accordance with the provisions of Section 311 of the Revenue Act of 1936.

* * * * *

Respectfully,

GUY T. HELVERING,

Commissioner,

By (Signed) GEO. C. EARLEY,

Internal Revenue Agent in Charge.

Enclosures:

Statement

Form of waiver

GLB:EGG [22]

IT:90D:GLB

STATEMENT

Central Holding Company, Transferor,
1226 American Bank Building,
Portland, Oregon

Liability for Income and Excess-profits Taxes
for the Taxable Years Ended June 30, 1937 and 1938

Mr. R. T. Jacob, Transferee,
917 Public Service Building,
Portland, Oregon.

Fiscal Year Ended June 30, 1937

	Deficiency	Penalty
Income Tax	\$3,930.34	\$1,965.17
Excess-profits Tax	1,382.16	691.08
Totals	<u>\$5,312.50</u>	<u>\$2,656.25</u>

Fiscal Year Ended June 30, 1938

	Deficiency
Income Tax	\$1,875.48
Excess-profits Tax	1,098.88
Total	<u>\$2,974.36</u>

The records of this office disclose that assets of the Central Holding Company were transferred to you on or about August 17, 1937.

A penalty equal to 50 percentum of the total amount of the deficiencies in income and excess-profits tax for the taxable year ended June 30, 1937, has been added in accordance with the provisions of Section 293(b) of the Revenue Act of 1936 [23]

The above-mentioned deficiencies represent your liability under Section 311 of the Revenue Act of 1936 as a transferee of the assets of the Central Holding Company, Portland, Oregon, for deficiencies of income and excess-profits taxes and penalties due from the Central Holding Company for the fiscal years ended June 30, 1937, and June 30, 1938. [24]

EXHIBIT B

United States Board of Tax Appeals

Docket No. 99161

ROBERT T. JACOB (Alleged Transferee),
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency and proposed

transferee liability set forth by the Commissioner of Internal Revenue in his notice of deficiency and proposed transferee liability dated March 17, 1939, bearing the symbols IT:90D:GLB, and as a basis of his proceeding alleges as follows: [30]

* * * * *

(p) The respondent further erred in determining that petitioner is a transferee of assets of the Central Holding Company and is liable as a transferee for any tax liability of the Central Holding Company described in aforesaid notice of deficiency.

5. The facts upon which petitioner relies as the basis of this proceeding are as follows:

(a) Central Holding Company was incorporated under the laws of the State of Oregon on or about June 15, 1936, for the purpose of acquiring the real and personal property known as the Welcome Hotel, situated in Burns, Harney County, Oregon, and to engage in the hotel business.

(b) That on or about July 1, 1936, Central Holding Company purchased the said Welcome Hotel, took possession thereof, and commenced the operation of the business.

(c) That Central Holding Company acquired said hotel property, both real and personal, for the sum of \$42,848.10, of which \$19,848.10 was paid in cash to the vendor and others, for the title to be cleared and the liquidation of claims asserted against the property, and \$23,000.00 by the assumption of delinquent taxes against the property.

(d) That prior to the formation of said corporation, E. W. Barnes held a contract for the purchase of said hotel, in which James L. Conley claimed or

had some interest, the nature of which is to petitioner unknown; that they did not have and were unable to raise the money necessary to pay the cash portion of the aforesaid purchase price; that the said Barnes and Conley thereupon proposed to petitioner that if he would raise the money needed to complete the said purchase, they would give him an undivided one-third interest in the property to be acquired under said contract; that petitioner thereupon negotiated a loan of \$15,000.00 from one Robert S. Farrell to be used in making the aforesaid cash payment, which loan was to be secured by a mortgage on the Welcome Hotel property to be acquired as aforesaid, and in addition thereto petitioner was to execute a mortgage on his own real property consisting of a town site located near Bonneville Dam, Oregon, and a residence property at Seaside, Oregon; that in addition to [32] said security, the said Farrell demanded, as a condition for making said loan, that petitioner should have control of the corporation to be formed for the purpose of taking title to said property, and to that end petitioner should, during the entire period of time that the said loan remained unpaid, be the owner of at least 51% of the capital stock of said corporation; that prior to the formation of the corporation, it was agreed between the petitioner and the said Barnes and Conley that the capital stock of the corporation should be divided equally among the three parties, one-third thereof to petitioner, one-third to E. W. Barnes, and one-third to James L. Conley, and it was further agreed, in order to comply with the

aforesaid conditions imposed by the said Farrell, that E. W. Barnes and James L. Conley would each deliver to petitioner a sufficient number of shares of capital stock so that the total of all stock held by petitioner would equal at least 51% of the total capital stock of the corporation, but that the stock to be delivered by the said Barnes and Conley to petitioner as aforesaid should be held in trust by petitioner until the mortgage loan of the said Farrell was liquidated, at which time the said stock should be returned to the respective parties; that at or about the time the agreement was made, and prior to the issuance of any certificates of capital stock, petitioner promised to make a gift of his shares of capital stock in said corporation to be formed as aforesaid to the members of his family, to be divided equally among petitioner's wife, Agnes C. Jacob, and three daughters, Gwendolyn E. Jacob, Shirley M. Jacob and Beverly J. Jacob; that petitioner informed his wife and daughters, prior to the issuance of the certificates of capital stock, that he would give them the said stock in the proportions named, but that he would be compelled to retain the stock in his own name temporarily until such time as the loan of said Farrell was liquidated for the purpose of complying with the aforesaid condition imposed by the said Farrell, and agreed to transfer the stock to them as soon as the obligation to said Farrell to hold said stock was terminated; that pursuant to the aforesaid understanding between the parties, the corporation was organized with capital stock consisting of 300 shares

of no par value; that upon the formation of the corporation, a certificate for 100 shares of capital stock was issued to petitioner in his name in accordance with the aforesaid understanding, which petitioner took and held in trust for his wife and three children; one certificate was issued to E. W. Barnes for $73\frac{1}{2}$ shares of stock and a second certificate was issued to him for $26\frac{1}{2}$ shares, which latter certificate the said Barnes endorsed and delivered to petitioner to be held in trust for the purposes aforesaid; that one certificate was issued to James L. Conley for $73\frac{1}{2}$ shares and another certificate for $26\frac{1}{2}$ shares, which latter certificate the said Conley endorsed and delivered to petitioner to be held in trust for the purposes aforesaid; that the said Farrell made the aforesaid mortgage loan to the corporation, secured in the manner set forth above, upon the condition that petitioner would retain the aforesaid stock in his name and be in a position to control the corporation as long as the loan remained unpaid; that thereafter the corporation continued to function as such in the ownership, management and control of said hotel property.

(e) That on July 15, 1937, the Welcome Hotel building and contents was destroyed by fire, which consumed all of the hotel building proper except that portion of the building containing the heating plant and some apartments and stores. [33]

(f) That subsequent to said fire, the Central Holding Company planned to continue operations and engage in the hotel business, either by reconstructing the hotel building which had been de-

stroyed by fire or by the acquisition of other hotel property, and to that end, its officers engaged in obtaining plans, specifications, and estimates for reconstruction, negotiated for loans with which to reconstruct said hotel building and/or for the purchase of other hotel property.

(g) That on or about July 27, 1937, the exact date being to petitioner unknown, the Central Holding Company, acting through the said Barnes and Conley, borrowed the sum of \$10,000.00 from the United States National Bank of Portland, Oregon, which loan was secured by an assignment of two policies of fire insurance totaling \$13,000.00 upon the property destroyed by fire, and with the monies thus obtained the Central Holding Company paid to Robert S. Farrell the balance owing to him upon the aforesaid mortgage loan.

(h) That on or about July 27, 1937, when said payment to Robert S. Farrell was made, petitioner was released from the obligation to retain legal ownership of at least 51% of the capital stock of the corporation, and thereupon petitioner returned to E. W. Barnes the aforesaid certificate for 26½ shares theretofore delivered to petitioner, and returned to James L. Conley the certificate for 26½ shares of stock formerly delivered to petitioner by the said Conley, and at the same time surrendered the original certificate of stock issued to petitioner for 100 shares and caused to be executed and delivered new certificates of stock in lieu thereof as follows: a certificate to petitioner for one share; a certificate to Agnes C. Jacob for 24 shares; certifi-

cates to Gwendolyn E. Jacob, Shirley M. Jacob and Beverly J. Jacob for 25 shares each. That the certificates so executed and delivered on or about July 27th were in pursuance of the gift made to the members of petitioner's family in accordance with the agreement and understanding referred to above.

(i) That shortly after the said hotel building was destroyed by fire and prior to July 27, 1937, petitioner and said E. W. Barnes entered into an agreement by the terms of which petitioner agreed to sell and E. W. Barnes agreed to purchase the one hundred shares of capital stock of Central Holding Company issued to petitioner as aforesaid and held by him in trust for the members of his family, and the said Barnes agreed to pay therefor an amount equal to the value thereof as determined by an accounting; that petitioner entered into said agreement with the said Barnes for and on behalf of the aforesaid members of his family; that for that purpose the said E. W. Barnes procured one John McGrath, bookkeeper for the Central Holding Company, to prepare a statement of the accounts of the company, and petitioner agreed to accept payment in accordance with the net worth of the company as disclosed by said account, and as a result thereof agreed to and did accept in payment of said stock the sum of \$20,422.10. That \$2,422.10 thereof was paid on or about the 12th day of August, and \$18,000.00 was paid by said E. W. Barnes on August 17, 1937; that at the time of the payment of the sum of \$18,000.00 as aforesaid, petitioner delivered to E. W. Barnes the aforesaid five certifi-

cates of stock formerly issued to petitioner and the members of his family as afore- [34] said, all of which certificates were endorsed by the respective owners thereof prior to delivery; that at the said time petitioner delivered to the said Barnes a written resignation, resigning as Secretary and Director of the Central Holding Company; that since the sale and transfer of the stock to E. W. Barnes, as aforesaid, neither petitioner nor the aforesaid members of his family have had any interest in the Central Holding Company whatsoever.

(j) That during the period of time between the fire and the sale of the stock to E. W. Barnes as aforesaid, the Central Holding Company was engaged in negotiating for and did purchase property with the funds of the corporation to be used for hotel purposes; it investigated the purchase of numerous hotel properties offered to the corporation; it procured plans and specifications to be made and estimates to be furnished for the reconstruction of the hotel property on the site of the Welcome Hotel; that on August 4, 1937, the Central Holding Company purchased the unfinished hotel structure at Hines, Harney County, Oregon, about two miles west of Burns, Oregon, with funds of the corporation, said property being

Lots 2, 3, 4, 5, 6, and 7 in Block 98, Tract 5,
Stafford Derbes & Roy Subdivision in Harney
County, Oregon,

and also acquired Lots 1 and 8 to 53, inclusive, in the same block and tract of the same addition, with funds of the corporation; that the title thereto was

first taken in the names of Mr. and Mrs. E. W. Barnes and was thereafter, to wit: on November 29, 1937, conveyed to the Central Holding Company by deed recorded on December 3, 1937, in Book 38, Page 38 of Deed Records in the office of the County Clerk of Harney County, Oregon.

(k) That long prior to November 21, 1937, Central Holding Company commenced negotiations with one Frank Amato for the purchase from him of a hotel property known as the Arlington Hotel at Arlington, Gilliam County, Oregon, and on November 21, 1937, a contract was entered into for the purchase of said hotel, being

Lots 8, 9, 10 and 11 in Block A Denny's Addition to the Town of Arlington, Gilliam County, Oregon, and all of Lot 11 in Block A located in J. W. Smith's Plat in the original town of Arlington.

Also Lots 12, 13, 14, and 15, except the west 50 feet thereof, all in Block A, Denny's Addition to the Town of Arlington, Gilliam County, Oregon,

including the real property and the personal property located thereon consisting of furniture and furnishings of said hotel property; that on December 15, 1937, the said Frank Amato conveyed said Arlington Hotel property to Central Holding Company by deed dated December 15, 1937, and recorded in the office of the County Clerk of Gilliam County, Oregon, in Book 30, Page 624; that the purchase price of said property was the sum of \$50,000.00,

which was paid as follows: \$15,000.00 by conveyance to Frank Amato of the real [35] property acquired by the Central Holding Company at Hines, Oregon, as aforesaid; \$23,868.92 by the execution and delivery by the Central Holding Company to Frank Amato of a purchase money mortgage on the said Arlington Hotel; \$6,313.08 in cash, and the balance by the assumption of delinquent taxes against the aforesaid property; that the promissory note secured by said purchase money mortgage was executed by the Central Holding Company, and the cash payment of \$6,313.08 was made with funds of the corporation.

(l) That thereafter the Central Holding Company continued to own and operate the said hotel in its own name and for its own benefit until September 21, 1938, when it conveyed the said Arlington Hotel property to E. W. Barnes and Olive G. Barnes, which conveyance was made by the Central Holding Company.

(m) That on August 17, 1937, when petitioner sold the stock for and on behalf of the members of his family to E. W. Barnes as aforesaid, Central Holding Company was a solvent corporation and continued to be a solvent corporation thereafter and continued to be the owner of hotel property and engaged in the hotel business until September 21, 1938, when it conveyed the property as aforesaid.

(n) That the said corporation was not dissolved prior to, at the time of the sale of the stock as aforesaid, or at any time thereafter.

(o) That during the fiscal year ending June 30, 1937, the gross income of the said corporation from all sources did not exceed the sum of \$37,881.90; that the deductible expenses of said corporation during said year were in excess of the sum of \$26,895.23; that during said fiscal year the physical properties of said corporation depreciated in the sum of \$3,228.25; that during said fiscal year the net taxable income of said corporation did not exceed the sum of \$7,758.42.

(p) That the net income for the fiscal year ending June 30, 1938, derived by Central Holding Company from the operation of the Welcome Hotel at Burns, Oregon, and the profit realized from the insurance money collected by reason of the destruction of the Welcome Hotel did not exceed the sum of \$18,705.35, but petitioner has no knowledge or information sufficient to form a belief as to the net income earned or loss sustained by Central Holding Company during said taxable year by reason of the operation by it of the hotel at Arlington, Oregon, or from any other sources.

(Duly verified.) [36]

EXHIBIT C

[Title of Board and Cause.]

ANSWER

Comes Now the Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel,

Bureau of Internal Revenue, and for answer to the petition filed herein, admits, denies and alleges as follows:

* * * * *

4. Denies that he erred in his determination of the deficiencies in tax and penalties as shown by the notice of deficiency from which the petitioner's appeal is taken. Specifically denies that he erred in the manner and form as alleged in subparagraphs (a) to (p), inclusive, of paragraph 4 of the petition.

5 (a) and (b). Admits the allegations contained in subparagraphs (a) and (b) of paragraph 5 of the petition.

(c). Admits that the Central Holding Company acquired said hotel property, both real and personal. Denies the remaining allegations contained in subparagraph (c) of paragraph 5 of the petition.

(d). Admits that petitioner negotiated a loan of \$15,000.00 from one Robert S. Farrell, to be used in making the required cash payment on account of the purchase price of said hotel; that it was agreed between the petitioner and the said Barnes and Conley that the capital stock of the corporation should be divided equally among the three parties, one-third thereof to petitioner, one-third to E. W. Barnes and one-third to Jas. L. Conley; that it was further agreed, in order to comply with certain conditions imposed by said Farrell, that E. W. Barnes and Jas. L. Conley would each deliver to petitioner a sufficient number of shares of the capital stock so that the total of all the stock

held by the petitioner would equal at least 51% of the total capital stock of the corporation, but that the stock to be delivered by the said Barnes and Conley to petitioner, as aforesaid, should be held by petitioner until the loan of the said Farrell was liquidated, at which time the [38] said stock should be returned to the respective parties; that the corporation was organized with capital stock consisting of 300 shares of no par value; that upon the formation of the corporation, a certificate for 100 shares of the capital stock was issued to petitioner in his name; that one certificate was issued to E. W. Barnes for 73½ shares of stock and that a second certificate was issued to him for 26½ shares, which latter certificate the said Barnes endorsed and delivered to petitioner; that one certificate was issued to Jas. L. Conley for 73½ shares and another certificate for 26½ shares, which latter certificate the said Conley endorsed and delivered to petitioner. Denies the remaining allegations contained in subparagraph (d) of paragraph 5 of the petition. Alleges that the loan negotiated by petitioner from Robert S. Farrell in the amount of \$15,000.00, as aforesaid, was made by said Farrell to petitioner and his associates, to wit: E. W. Barnes and Jas. L. Conley, on the condition that petitioner own at least 51% of the equity in the property to be thereafter acquired, and which was in fact thereafter acquired by the Central Holding Company, as aforesaid.

(e). Admits the allegations contained in subparagraph (e) of paragraph 5 of the petition.

(f). Denies the allegations contained in subparagraph (f) of paragraph 5 of the petition.

(g). Admits that on or about, to wit: July 27, 1937, there was paid to Robert S. Farrell the balance owing him upon the aforesaid loan. Denies the remaining allegations contained in subparagraph (g) of paragraph 5 of the petition.

(h). Admits that on or about, to wit: July 27, 1937, when said payment to Robert S. Farrell was made, petitioner returned to E. W. Barnes the aforesaid certificate for 26½ shares, theretofore delivered to petitioner, and returned to Jas. L. Conley the certificate for 26½ shares of stock, formerly delivered to petitioner by the said Conley. Denies the remaining allegations contained in subparagraph (h) of paragraph 5 of the petition.

(i). Denies the allegations contained in subparagraph (i) of paragraph 5 of the petition.

(j), (k) and (l). For lack of sufficient information upon the basis of which to form a belief as to the truth *of* falsity thereof, denies the allegations contained in subparagraph (j), (k) and (l) of paragraph 5 of the petition.

(m). Denies the allegations contained in subparagraph (m) of paragraph 5 of the petition.

(n). For lack of sufficient information upon the basis of which to form a belief as to the truth or falsity thereof, denies the allegations contained in subparagraph (n) of paragraph 5 of the petition.

(o) and (p). Denies the allegations contained in subparagraphs (o) and (p) of paragraph 5 of the petition. [39]

6. Denies generally and specifically each and every material allegation contained in the petition herein, not hereinbefore specifically admitted, qualified, or denied.

7. Further answering the petition herein, the respondent alleges as follows:

(a). That on, to wit: March 3, 1939, there was assessed by respondent against the Central Holding Company, an Oregon corporation, in accordance with law in such case made and provided, deficiencies in respect of the income tax and excess-profits tax in the respective amounts of, to wit: \$3,930.34 and \$1,382.16, together with penalties in the respective amounts of, to wit: \$1,965.17 and \$691.08, determined by him, the respondent, to be due and owing by said Central Holding Company for its taxable fiscal year ended June 30, 1937.

(b). That on, to wit: March 3, 1939, there was assessed by respondent against the Central Holding Company, an Oregon corporation, in accordance with law in such case made and provided, deficiencies in respect of the income tax and excess-profits tax in the respective amounts of, to wit: \$1,875.48 and \$1,098.88, determined by him, the respondent, to be due and owing by said Central Holding Company for its taxable fiscal year ended June 30, 1938.

(c). That although payment of the deficiencies in income tax and excess-profits tax and penalties, as assessed against Central Holding Company, as aforesaid, has been duly demanded by respondent in accordance with law in such case made and provided, together with interest thereon as provided

by law, the said Central Holding Company has refused and still refuses to pay the same.

(d). That on or about, to wit: August 17, 1937, the only assets or property of value owned by said Central Holding Company consisted of, to wit: cash in the amount of, to wit: \$58,466.30 and certain real and personal property situate at Hines, Oregon, of a then value of, to wit: \$2,800.00.

(e). That on or about, to wit: August 17, 1937, the said Central Holding Company became a liquidated corporation, and has since so remained by reason of the fact that on that date, to wit: August 17, 1937, the said Central Holding Company distributed to and among its stockholders, according to their respective stock interests in said company, all and every of its assets and properties of value of whatever kind and nature whatsoever; that the assets and properties so distributed by said Central Holding Company to and among its stockholders, as aforesaid, consisted of cash in the amount of, to wit: \$58,466.30 and certain real and personal property situate at Hines, Oregon, of a value, as at the time of such distribution and liquidation, as aforesaid, of, to wit: \$2,800.00.

(f). That by reason of the liquidation and distribution by said Central Holding Company of its assets and properties to any among its stockholders, as aforesaid, said Central Holding Company then became and now is without assets or property out of or against which the respondent, on behalf of the [40] United States, may proceed for the purpose of

collecting the deficiencies in income tax and excess-profits tax and penalties due and owing by said Central Holding Company for the fiscal years ended June 30, 1937, and June 30, 1938, in the aggregate amount of, to wit: \$10,943.11, as aforesaid, together with interest thereon as provided by law.

(g). That as at the time of the liquidation of and distribution by said Central Holding Company of its assets and property to and among its stockholders on, to wit: August 17, 1937, as aforesaid, the petitioner herein was a stockholder in the said Central Holding Company; that as such stockholder, and without consideration, there was distributed by the said Central Holding Company to the petitioner on, to wit: August 17, 1937, assets and property, consisting of cash, in the amount of, to wit: \$20,422.10.

(h). That by reason of the premises, the petitioner became and now is liable, as a transferee of the property of the taxpayer, the said Central Holding Company, for the deficiencies in income tax and excess-profits tax and penalties due and owing by said Central Holding Company for the fiscal years ended June 30, 1937, and June 30, 1938, in the aggregate amount of, to wit: \$10,943.11, together with interest thereon as provided by law.

Wherefore, it is prayed that the Board may hear the proceeding and determine and hold: (1) that there are due and owing by the Central Holding Company, now a liquidated Oregon corporation, deficiencies in income tax and excess-profits tax for the fiscal year ended June 30, 1937, in the respective amounts of \$3,930.34 and \$1,382.16; (2) that there

are due and owing by the said Central Holding Company, now a liquidated Oregon corporation, penalties for the fiscal year ended June 30, 1937, in the respective amounts of, to wit: \$1,965.17 and \$691.08; (3) that there are due and owing by said Central Holding Company, now a liquidated Oregon corporation, deficiencies in income tax and excess-profits tax for the fiscal year ended June 30, 1938, in the respective amounts of, to wit: \$1,875.48 and \$1,098.88; (4) that petitioner is liable, as a transferee of the property of the taxpayer, the Central Holding Company, for the deficiencies in income tax and excess-profits tax and penalties due and owing by said taxpayer for the fiscal years ended June 30, 1937, and June 30, 1938, in the aggregate amount of, to wit: \$10,943.11, together with interest thereon as provided by law; and (5) that respondent is entitled to such other and additional relief as to the Board may seem fit and proper.

(Signed) J. P. WENCHEL

(Initialed) J. H. P.

J. P. WENCHEL,

Chief Counsel, Bureau
of Internal Revenue.

Of Counsel:

ALVA C. BAIRD,

B. H. NEBLETT,

JOHN H. PIGG,

Special Attorneys,

Bureau of Internal Revenue. [41]

EXHIBIT D

[Title of Board and Cause.]

DECISION

Pursuant to the stipulation of deficiencies of the parties in the above-entitled proceeding read into the record at the hearing on Novemembr 30, 1939, it is

Ordered and Decided that the petitioner is liable as a transferee of the assets of the Central Holding Co. for deficiencies in income and excess-profits taxes due from that company for the fiscal year ended June 30, 1937 (including 50 percent additions thereto) of \$3,793.08 and \$1,322.43, respectively; and for the fiscal year ended June 30, 1938, of \$1,875.48 and \$1,098.88 income and excess-profits taxes, respectively.

(Signed) CHARLES P. SMITH

Member.

Enter:

CPS:aa.

Entered Dec. 1939. [42]

EXHIBIT E

United States Board of Tax Appeals
Washington

Docket No. 99161

ROBERT T. JACOB (Alleged Transferee),
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ORDER

Pursuant to a stipulation made at a hearing of the above-entitled proceeding at Portland, Oregon, on November 30, 1939, the Board entered its decision of tax liabilities on December 5, 1939. On March 1, 1940, the respondent filed a motion with the Board asking that its decision in the above-entitled cause be vacated, set aside, and held for naught upon the ground, principally, that the tax liability determined did not cover unpaid tax liabilities of the Central Holding Co., the transferor, which had been assessed against that company. The Board discovering that the decision entered December 5, 1939, was not in accordance with the stipulation in that it failed to provide for interest upon the tax liabilities, it vacated its decision by an order entered March 4, 1940, and ordered the parties litigant to file with the Board on or before April 3, 1940, briefs in support of or against the motion filed by the respondent. Such briefs have been filed

and carefully considered. The respondent's brief was accompanied with a motion filed March 27, 1940, "for leave to file amended answer" for the purpose of increasing the transferee liability of the petitioner. For reasons stated in a Memorandum Sur Order attached hereto, it is—

Ordered that the respondent's motions filed March 1, 1940, and March 27, 1940, be and the same are hereby denied.

(Signed) CHARLES P. SMITH

Member.

Dated: April 9, 1940.

CPS:aa. [43]

[Title of Board and Cause.]

S. J. Bischoff, Esq., for the petitioner.

T. M. Mather, Esq., and

Alva C. Baird, Esq.,

for the respondent.

MEMORANDUM SUR ORDER

Smith: On March 17, 1939, respondent sent a deficiency notice to the Central Holding Co., 1226 American Bank Bldg., Portland, Oregon, reading in part as follows:

"You are advised that the determination of your income tax liability for the taxable year ended June 30, 1937, discloses a deficiency of

\$3,930.34 and \$1,965.17 in penalty, and that the determination of your excess-profits tax liability for the year mentioned discloses a deficiency of \$1,382.16 and \$691.08 in penalty, and that the determination of your income tax liability for the taxable year ended June 30, 1938, discloses a deficiency of \$1,875.48 and that the determination of your excess-profits tax liability for the year mentioned discloses a deficiency of \$1,098.88 as shown in the statement attached. Said deficiencies have been assessed under the provisions of the internal revenue laws applicable to jeopardy assessments.”

The petitioner appealed to this Board from the determination of the deficiencies, Docket No. 99258.

On March 17, 1939, the respondent sent notices of deficiency to R. T. Jacob, Transferee, Portland, Oregon, E. W. Barnes, Transferee, Portland, Oregon, Olive G. Barnes, Portland, Oregon, and James L. Conley, Transferee, Portland, Oregon, the first paragraph of which reads as follows:

“You are advised that the determination of the income tax liability of Central Holding Company, Portland, Oregon, for the year ended June 30, 1937, discloses a deficiency of \$3,930.34 and \$1,965.17 in penalty, and that the determination of its excess-profits tax liability for such year discloses a deficiency of \$1,382.16 and \$691.08 in penalty, and that the determination of such company’s income and excess-

profits tax liabilities for the year ended June 30, 1938, discloses deficiencies in the respective amounts of \$1,875.48 and \$1,098.88 as shown by the attached statement, which deficiencies and penalties plus interest [44] as provided by law, it is proposed to assess against you as transferee of the assets of said corporation, in accordance with the provisions of Section 311 of the Revenue Act of 1936.”

The petitioners appealed to this Board for the redetermination of such tax liabilities in Docket Nos. 99161, 99256, 99257 and 99259, respectively. These cases came on for hearing before a Member of the Board at Portland, Oregon, on November 29, 1939. Ivan F. Phipps, Esq., and Carl E. Davidson, Esq., appeared for the petitioners in the case of Central Holding Co., Docket No. 99258, and in the cases of James L. Conley, Transferee, Docket No. 99259, E. W. Barnes, Transferee, Docket No. 99256, and Olive G. Barnes, Docket No. 99257. S. J. Bischoff, Esq., appeared for petitioner Robert T. Jacob, Transferee. T. M. Mather, Esq., and Alva C. Baird, Esq., appeared for the respondent in all of the cases. All of the cases were heard together and pursuant to order of the Board the cases of the transferees were consolidated for hearing. On the second day of the hearings, November 30, 1939, the transcript of record reads in part as follows:

“Mr. Davidson: May it please your Honor, in the case of Central Holding Company, as a result of conversations between counsel and

some adjustments in the tax liability as a result of disclosures yesterday where capital amounts and loans were erroneously included in income, while the petitioner in this case does not wish to admit the fraud penalty, however, for the purpose of closing the case, it has been agreed between counsel for the respondent and counsel for the petitioner that the Board may enter its decision that there is a deficiency in income tax for the year ended June 30, 1937, in the sum of \$2,528.72; that there is a deficiency in excess profits tax for the fiscal year ended June 30, 1937, in the sum of \$881.62; that there may be asserted a 50% penalty in the amount of \$1,264.36 upon the deficiency in income tax for that year, and a 50% penalty in the amount of \$440.81 on the deficiency in excess profits taxes for that year.

“It is further stipulated between the parties that there is a deficiency for the fiscal year ended June 30, 1938, which is also before the Board, in the sum of \$1,875.48 in income taxes, and of \$1,098.88 in excess profits taxes.

“The Member: Does the government stipulate that the case may be disposed of by the entry of a decision to that effect?

“Mr. Mather: Just one moment, your Honor. That is correct, your Honor.

“The Member: Mr. Bischoff?

“Mr. Bischoff: In the case of Robert T. Jacob, Docket No. 99161, the petitioner, as a result of the same conference that was referred

to by counsel, and since the transferor has stipulated that a deficiency may be determined in the amount just set forth for taxes and penalties, and since your Honor has ruled that the [45] transferees are precluded from challenging the transferor's liability, pursuant to the stipulation of the transferor, the petitioner, Robert T. Jacob, while denying the amount of deficiency and the liability for penalty of the transferor, admits that he is transferee, and the decision may be entered against him in the amount set forth in the statement of counsel for the taxpayer.

“The Member: What is the situation with regard to the other transferees? Of course, the transferees are jointly and severally liable.

“Mr. Davidson: In the case of E. W. Barnes, Transferee, Olive G. Barnes, Transferee, and James L. Conley, Transferee, Docket Numbers 99256, 99257, and 99259, while the transferees do not admit the fraud penalty, inasmuch as it is admitted that a penalty may be entered in the transferor's case, they are foreclosed from contesting that, and they do admit they are transferees, and they consent that the Board may enter its decision in finding a liability for the amount of the deficiency assessed against the transferor in the Central Holding Company case.

“The Member: Do I understand that the transferee is admitting any interest that may be due?

“Mr. Davidson: The deficiency would necessarily carry the interest.

“The Member: That disposes of this group of cases entirely?”

“Mr. Mather: That is my understanding.

“The Member: The Board will enter a decision in accordance with the deficiencies which have been read into the record.”

Pursuant to the stipulations made by the parties at open hearings the Board entered a decision in each of the transferee proceedings reading as follows:

“Pursuant to the stipulation of deficiencies of the parties in the above-entitled proceeding read into the record at the hearing on November 30, 1939, it is—

“Ordered and Decided that the petitioner is liable as a transferee of the assets of the Central Holding Co. for deficiencies in income and excess-profits taxes due from that company for the fiscal year ended June 30, 1937 (including 50 percent additions thereto) of \$3,793.08 and \$1,322.43, respectively; and for the fiscal year ended June 30, 1938, of \$1,875.48 and \$1,098.88 income and excess-profits taxes, respectively.”

[46]

The decision entered did not provide for the collection of interest upon the amounts of deficiencies although the Board is of the opinion that there is no question but that the stipulation of the parties provided for the collection of interest upon the

stipulated deficiencies. The transcript of record above quoted contained the following:

“The Member: Do I understand that the transferee is admitting any interest that may be due?”

“Mr. Davidson: The deficiency would necessarily carry the interest.”

Davidson spoke for all of the interested parties. S. J. Bischoff, who alone represented Robert T. Jacob, remained silent. His silence was the equivalent of consent. There should have been added to the last sentence of the decisions as written “together with interest as provided by law.”

It was unquestionably the intention of all parties concerned that the stipulations made before the Board entirely disposed of the cases. The issues before the Board in the case of Central Holding Co., the transferor, was the amount of the deficiency in tax for the fiscal years ended June 30, 1937, and June 30, 1938. The respondent has made no motion for a revision of the decision of the Board entered in the case of Central Holding Co., Docket No. 99258.

The question in issue in the transferee cases was simply the liability of the transferees for the deficiencies in tax, with interest, due from the Central Holding Co. in Docket No. 99258. No question was before the Board as to the liability of the transferees for taxes which had theretofore been assessed against the Central Holding Co. for the

fiscal years ended June 30, 1937, and June 30, 1938, which had not been collected.

These liabilities were not involved in the pleadings. The Government was making no contention that the transferees were liable for the unpaid assessed taxes. They could not have been taken cognizance of by the Board on the pleadings before it. The only way that they could be brought into the picture would be by a motion to amend the answer, or by a motion for the filing of an amended answer. At the time of the hearings no such motion was made. The motion for the filing of an amended answer was not filed until March 27, 1940. It was untimely.

It is the function of the Board to sit as an arbiter of questions in issue between the respondent and the taxpayer. Stipulations settling litigation are always favored by the courts and by the Board. There should be an end to litigation.

Although it has been held in some cases that the decision of a court made pursuant to a stipulation may be modified or amended for the purpose of making the court's judgment conform to the stipulation of the parties and for the purpose of correcting mutual mistakes of fact, the court or the Board should not lend itself to a modification of its judgment or decision for the purpose of enabling one party over the objection of the other [47] to sweep away the stipulations made in open court.

In 60 Corpus Juris 781, it is said: "In the absence of fraud, mistake, or imposition, stipulations

admitting or agreeing on the existence of designated facts for the purpose of trial are binding conclusively upon the parties as to the facts so designated, as long as the stipulations stand; and on the court as well as on the parties.

In *Silverman v. Bermuda & West Indies S. S. Co., Ltd.*, 12 Fed. Supp. 164, 168, it was pointed out (citing 179 N. Y. 473, at page 482): "A stipulation made by the parties or their attorneys * * * stands in the case for all purposes until 'litigation is ended, unless the court upon application shall relieve either or both of the parties from its operation.' "

It was clearly the intention of the attorneys representing the transferees and Government counsel to enter into stipulations which should cover the liabilities of the petitioners as transferees of the assets of Central Holding Co. only in so far as the deficiencies concerned in Docket No. 99258 were involved. No other liabilities were in issue. The Board accepted the stipulations of the parties. Decisions will be entered carrying into effect the stipulations made. Respondent's motions will be denied.
Enter:

Entered Apr. 9, 1940. [48]

[Title of Board and Cause.]

DECISION

Pursuant to the stipulation of the parties in the above-entitled proceeding read into the record on November 30, 1939, it is—

Ordered and Decided that the petitioner is liable as a transferee of the assets of the Central Holding Co. for deficiencies in income and excess-profits taxes due from that company for the fiscal year ended June 30, 1937 (including 50 percent addition thereto), of \$3,793.08 and \$1,322.43, respectively, with interest as provided by law, and for the fiscal year ended June 30, 1938, of \$1,875.48 and \$1,098.48 income and excess-profits taxes, respectively, together with interest as provided by law.

(Signed) CHARLES P. SMITH

Member.

Enter:

Entered Apr. 10, 1940.

CPS:aa. [49]

EXHIBIT F

United States Board of Tax Appeals
Washington

Docket Nos. 99161
99256
99257
99259

ROBERT T. JACOB (Alleged Transferee), E. W.
BARNES, Transferee, OLIVE G. BARNES
and JAMES L. CONLEY,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ORDER DENYING RESPONDENT'S MOTION

Counsel for the respondent has now on May 7, 1940, filed a motion and brief in support thereof praying: (a) That an order be entered by the Chairman directing that the report of the division entered in each of the above entitled proceedings, on April 9, 1940, be reviewed by the Board; (b) That the orders and decisions entered by said division in each of said proceedings, on April 9, 1940, and April 10, 1940, be vacated and set aside; (c) That an order be entered by the Board relieving the respondent and the Government of the United States of the inadvertent and oppressive oral stipulations entered into by counsel for respondent in respect of these transferee proceedings, on November 30, 1939; (d) That a new trial for rehearing be

granted and ordered; and (e) That said transferee proceedings be restored to the Circuit Calendar for hearing, in due course, at or in the vicinity of Portland.

Much of the argument made in support of the present motion was presented in a previous motion and was considered when the report and orders of Division No. 5 (Smith), entered on April 9 and 10, 1940, were prepared. The purpose of the motions is to secure relief from stipulations entered into between counsel for the parties which stipulations settled the several proceedings. The ground for the motions is that counsel for the respondent was not aware, at the time of stipulating, of the fact that certain taxes of Central Holding Company, transferor, were unpaid.

It appears that the counsel could have been informed of all the facts by the exercise of due diligence, and that counsel for the respondent was not misled or misinformed by the petitioners. In these circumstances the proper exercise of our discretion is to require the parties to abide by their stipulation.

Accordingly, it is hereby

Ordered that the motion of counsel for the respondent, filed on May 7, 1940, be and hereby is Denied.

(Signed) C. R. ARUNDELL

Chairman.

Dated: May 9, 1940.

[Endorsed]: U. S. B. T. A. Filed July 2, 1941.

United States Board of Tax Appeals

Docket No. 108032

AGNES C. JACOB (Alleged Transferee),
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above-named petitioner admits, denies and alleges as follows:

1. Admits the allegations contained in paragraph 1 of the petition.
2. Admits the allegations contained in paragraph 2 of the petition.
3. Admits the allegations contained in paragraph 3 of the petition. Alleges that the total amount of the income and excess-profits taxes determined by respondent as assessable against the Central Holding Company was and is in excess of the total amount as alleged in paragraph 3 of the petition.
4. Denies that the respondent erred in his [51] determination of the transferee liability of the petitioner as shown by the notice of deficiency and of transferee liability from which petitioner's appeal is taken. Specifically denies that he erred in

the manner and form as alleged in subparagraphs (a) to (h), inclusive, of paragraph 4 of the petition.

5(a) and (b). Admits the allegations contained in subparagraphs (a) and (b) of paragraph 5 of the petition.

5(c). Admits that the said corporation was organized with capital stock consisting of 300 shares of no par value; that upon the formation of the corporation 100 shares of the capital stock of said corporation were subscribed for and issued to Robert T. Jacob; denies the remaining allegations contained in subparagraph (c) of paragraph 5 of the petition.

5(d). Admits the allegations contained in subparagraph (d) of paragraph 5 of the petition.

5(e). Admits that on July 15, 1937, the Welcome Hotel Building and contents were destroyed by fire; denies the remaining allegations contained in subparagraph (e) of paragraph 5 of the petition.

5(f) to (k), inclusive. Denies the allegations contained in subparagraphs (f) to (k), inclusive, of paragraph 5 of the petition.

5(l). Admits that the Commisisoner of Internal Revenue sent to Robert T. Jacob, transferee, a notice of deficiency of tax of the Central Holding Company. Denies the remaining [52] allegations contained in subparagraph (l) of paragraph 5 of the petition.

5(m) to (p), inclusive. Denies the allegations contained in subparagraphs (m) to (p), inclusive, of paragraph 5 of the petition.

5(q). Admits that at or about the time that Robert T. Jacob subscribed for the shares of capital stock, as aforesaid, Robert T. Jacob promised to make a gift of said capital stock to the petitioner, who is the wife of the said Robert T. Jacob, and to Shirley May Jacob, Beverly Jean Jacob, and Gwendolyn E. Jacob, daughters of Robert T. Jacob, in equal shares. Denies the remaining material allegations contained in subparagraph (q) of paragraph 5 of the petition.

6. Denies generally and specifically each and every material allegation in the petition herein not hereinbefore specifically admitted, qualified or denied.

7. Further answering the petition herein the respondent alleges as follows:

(a). That on, to-wit: September 15, 1938, the Central Holding Company, an Oregon corporation, filed with the Collector of Internal Revenue for the District of Oregon, its corporation income and excess-profits tax return for the fiscal year ended June 30, 1938, disclosing thereon income tax and excess-profits tax liabilities in the respective [53] amounts of, to-wit: \$3,163.80 and \$2,844.02; that on or about, to-wit: September 15, 1938, said amounts of, to-wit: \$3,163.80 and \$2,844.02, representing the amounts of income tax and excess-profits tax liabilities reported on the return of the Central Holding Company to be due for the fiscal year ended June 30, 1938, as aforesaid, were duly assessed against said Central Holding Company, in

accordance with law in such cases made and provided.

(b). That although payment of the amounts of the income tax and excess-profits tax liability of, to-wit, \$3,163.80 and \$2,844.02, reported to be due by and on the return as filed by the Central Holding Company for the fiscal year ended June 30, 1938, as aforesaid, has been duly demanded by respondent in accordance with law in such case made and provided, together with interest thereon as provided by law, the said Central Holding Company has refused and still refuses to pay the same.

(c). That on, to-wit: March 3, 1939, there were assessed by respondent against the Central Holding Company, an Oregon corporation, as aforesaid, in accordance with law in such case made and provided, deficiencies in respect of the income tax and excess-profits tax in the respective amounts of, to-wit: \$1,875.48 and \$1,098.88, determined by him, the respondent, to be due and owing by said Central Holding Company for its taxable fiscal year ended June 30, 1938. [54]

(d). That although payment of the deficiencies in income tax and excess-profits tax as assessed against said Central Holding Company, as aforesaid, has been duly demanded by respondent, in accordance with law in such case made and provided, together with interest thereon as provided by law, the said Central Holding Company has refused and still refuses to pay the same.

(e). That on or about, to-wit: August 17, 1937, the only assets or property of value owned by said

Central Holding Company consisted of, to-wit: Cash in the amount of, to-wit: \$58,466.30, and certain real and personal property situate at Hines, Oregon, of a then value of, to-wit: \$2,800.

(f). That on or about, to-wit: August 17, 1937, the said Central Holding Company became a liquidated corporation and has since so remained, by reason of the fact that on that date, to-wit: August 17, 1937, the said Central Holding Company distributed to and among its stockholders, according to their respective stock interests in said company, all and every of its assets and properties of value of whatever kind and nature whatsoever; that the assets and properties so distributed by said Central Holding Company to and among its stockholders, as aforesaid, consisted of cash in the amount of, to-wit: \$58,466.30 and certain real and personal property situate at Hines, Oregon, of a value, as at the [55] time of such distribution and liquidation, as aforesaid, of, to-wit: \$2,800.

(g). That no part of the aforesaid amounts of income tax and excess-profits tax of, to-wit: \$3,163.80 and \$2,844.02, respectively, reported to be due by and on the return as filed by the Central Holding Company for the fiscal year ended June 30, 1938, as aforesaid, has been paid, and said amounts now remain due and unpaid.

(h). That no part of the deficiencies in income tax and excess-profits tax, determined by respondent to be due from and assessed against the Central Holding Company, as aforesaid, in the re-

spective amounts of, to-wit: \$1,875.48 and \$1,098.88, has been paid, and said amounts now remain due and unpaid.

(i). That by reason of the liquidation and distribution by said Central Holding Company of its assets and properties to and among its stockholders, as aforesaid, said Central Holding Company became and now is insolvent and is without assets or property of any kind or value whatsoever with which to pay the income tax and excess-profits tax reported on its return to be due for the fiscal year ended June 30, 1938, as aforesaid, or the deficiencies in income tax and excess-profits tax determined to be due from and assessed against the Central Holding Company, as aforesaid, or out of or against which the respondent, on behalf of the United States, may proceed for the purpose of collecting either the amounts [56] of income tax and excess-profits tax so reported on its return to be due by the Central Holding Company for the fiscal year ended June 30, 1938, as aforesaid, or the deficiencies in income tax and excess-profits tax determined to be due from and assessed by respondent against the Central Holding Company for said fiscal year, as aforesaid, all in the aggregate amount of, to-wit: \$8,982.18, together with interest thereon as provided by law.

(j). That as at the time of the liquidation of and distribution by said Central Holding Company of its assets and properties to and among its stockholders on, to-wit: August 17, 1937, as aforesaid, the pe-

tioner herein was a stockholder in the said Central Holding Company; that as such stockholder, and without consideration, there were distributed by said Central Holding Company to the petitioner on, to-wit: August 17, 1937, assets or property, consisting of cash in the amount of, to-wit: \$4,901.30; that, in the alternative, as such stockholder, and without consideration, there were distributed by said Central Holding Company to the petitioner on, to-wit: August 17, 1937, other assets or property of a then fair market value of, to-wit: \$4,901.30.

(k). That, in the alternative, as at the time of the liquidation of and distribution by said Central Holding Company of its assets and properties to and among its stockholders, to-wit: August 17, 1937, as aforesaid, the [57] petitioner's husband, Robert T. Jacob, was a stockholder in the said Central Holding Company; that as such stockholder, and without consideration, there were distributed by said Central Holding Company to the said Robert T. Jacob on, to-wit: August 17, 1937, assets or property consisting of cash in the amount of, to-wit: \$20,422.10; that in the alternative, as such stockholder, and without consideration, there were distributed by said Central Holding Company to said Robert T. Jacob on, to-wit: August 17, 1937, other assets or property of a then fair market value of, to-wit: \$20,422.10; that on some date unknown to respondent, but believed by him to be on or about, to-wit: August 17, 1937, the said Robert T. Jacob, without consideration, made a gift or otherwise

transferred to the petitioner, out of the funds distributed to him by said Central Holding Company, as aforesaid, of the amount of, to-wit: \$4,901.30 in cash; that, in the alternative, on some date unknown to respondent, but believed by him to be on or about, to-wit: August 17, 1937, the said Robert T. Jacob, without consideration, made a gift or otherwise transferred to petitioner, out of the assets or property distributed to him by the Central Holding Company, as aforesaid, assets or property of a then fair market value of, to-wit: \$4,901.30.

(1). That by reason of the premises the petitioner became and now is liable as a transferee or as a transferee of a transferee of the property of the Central Holding [58] Company, for and on account of the unpaid income tax and excess-profits tax now due and owing by said Central Holding Company for the fiscal year ended June 30, 1938, to the extent and in the amount of, to-wit: \$4,901.30, together with interest thereon as provided by law.

Wherefore, it is prayed that the Board may hear the proceeding and determine and hold: (1) that there are due and owing by the Central Holding Company, now a liquidated Oregon corporation, income and excess-profits in the respective amounts of, to-wit: \$3,163.80 and \$2,844.02, reported by said Central Holding Company on its return for the fiscal year ended June 30, 1938, to be due for that year as aforesaid; (2) that there are due and owing by said Central Holding Company, now a liquidated Oregon corporation, deficiencies in income tax and

excess-profits tax for said fiscal year ended June 30, 1938, in the amounts, respectively, of, to-wit: \$1,875.48 and \$1,098.88; (3) that petitioner is liable, as a transferee or as a transferee of a transferee of the property of the taxpayer, the Central Holding Company, for the income tax and excess-profits tax, including the deficiencies, as aforesaid, due and owing by said taxpayer for the fiscal year ended June 30, 1938, in the aggregate amount of, to-wit: \$8,982.18, to the extent and in the amount of, to-wit: \$4,901.30, together with interest thereon as provided by law; and (4) that respondent is entitled to [59] such other and additional relief as to the Board may seem fit and proper.

(Signed) J. P. WENCHEL, JHP

Chief Counsel, Bureau of Internal Revenue.

Of Counsel:

ALVA C. BAIRD,

Division Counsel;

JOHN H. PIGG,

Special Attorney,

Bureau of Internal Revenue.

[Endorsed]: U.S.B.T.A. Filed Aug. 20, 1941. [60]

[Title of Board and Cause.]

REPLY

Comes now the petitioner above named and for reply to the further answer of the respondent admits, denies and alleges as follows:

1. Admits the allegations set forth in the paragraph 7 (a) of the said affirmative answer.

2. Denies that she has any knowledge or information as to any of the allegations set forth in paragraph 7 (b) of the affirmative answer sufficient to form a belief thereof.

3. Denies the allegations set forth in the paragraph of the affirmative answer numbered 7 (c).

4. Denies that she has any knowledge or information as to the allegations set forth in the paragraph of the affirmative answer numbered 7 (d).

5. Denies the allegations set forth in the paragraphs of the affirmative answer numbered respectively 7 (e), 7 (f), 7 (g), 7 (h), 7 (i), 7 (j) and 7 (l).

6. Admits that Robert T. Jacob, petitioner's husband, was a stockholder of the Central Holding Company, and except as herein specifically [61] admitted, denies each and every of the allegations set forth in the paragraph of the affirmative answer numbered 7 (k).

Wherefore, petitioner prays for judgment as demanded in the petition.

Attorney for Petitioner.

(s) S. J. BISCHOFF,

1116 Public Service Building,
Portland, Oregon.

[Endorsed]: U.S.B.T.A. Filed Sept. 24, 1941.

[62]

United States Board of Tax Appeals

Docket Nos. 108032, 108033, 108034, 108035.

Promulgated July 23, 1942.

AGNES C. JACOB (Alleged Transferee),
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

SHIRLEY MAY JACOB (Alleged Transferee),
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

BEVERLY JEAN JACOB (Alleged Transferee),
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

GWENDOLYN E. JACOB (Alleged Transferee),
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

FINDINGS OF FACT AND OPINION

In 1936 Jacob with Conley and Barnes acquired a certain hotel property and transferred it to a newly organized corporation, each receiving one-

third of the capital stock. Jacob had advised petitioners, his wife and daughters, that he was going to give them part of the stock to be received by him, but because of an agreement with a creditor of the corporation to hold control until the debt was paid, he could not immediately transfer the shares to them. The hotel burned and the debt was paid from the fire insurance. Immediately upon payment of the debt, Jacob had 99 of his 100 shares of stock issued in the names of the petitioners, after which the net insurance proceeds were distributed in equal parts between the Conley, Barnes, and Jacob stock, leaving the corporation insolvent. Respondent determined a deficiency against the corporation and transferee liability therefor against Jacob, Barnes, and Conley, who filed petitions with the Board contesting such liability. The proceedings were settled by agreement and pursuant to the agreement decisions for the deficiency were entered against the three petitioners as transferees. It was later developed that the corporation had failed to pay the income tax shown on its return and the respondent determined that these petitioners were the owners of 99 shares of the Jacob stock at the time the insurance proceeds were distributed and were liable as transferees for the unpaid tax. Petitioners were the owners of the 99 shares at the time of the distribution of the net insurance proceeds and Jacob, acting for them, received their respective shares of the money distributed. Held, that the respondent is not estopped to assert transferee liability against the petition-

ers and that the prior proceeding in which Jacob sought to litigate his individual liability as transferee is not *res judicata* in these proceedings; held, further, that the petitioners are liable as transferees of the corporation to the extent of their respective shares in the amounts received by Jacob for them.

S. J. Bischoff, Esq.,
for the petitioners.

John Pigg, Esq.,
for the respondent.

The Central Holding Co. filed an income and excess profits tax return for the fiscal year ended June 30, 1938, showing liability for income tax and excess profits tax in the respective amounts of \$3,163.80 and \$2,844.02, or a total of \$6,007.82. No part of either the income tax or the excess profits tax so reported has ever been paid. The respondent has determined that the petitioners were transferees of assets of the Central Holding Co. and proposes to assess against them as such transferees the following indicated amounts, plus interest as provided by law:

	Docket No.	Amount
Agnes C. Jacob.....	108032	\$4,901.30
Shirley May Jacob.....	108033	5,105.52
Beverly Jean Jacob.....	108034	5,105.52
Gwendolyn E. Jacob.....	108035	5,105.52

FINDINGS OF FACT

The petitioners are residents of Portland, Oregon. Petitioner Agnes C. Jacob is the wife of Robert T. Jacob and the other three petitioners are

their daughters. Gwendolyn E. Jacob was born on August 28, 1917, Shirley May Jacob on October 10, 1918, and Beverly Jean Jacob about 1923. From about 1921 until 1926 Robert T. Jacob was employed in the office of the collector of internal revenue at Portland, Oregon. Upon his admission to the bar in 1926 he began the practice of law in Portland, where he has since continued to practice. Since his admission to the bar he has devoted a considerable portion of his time to handling income tax matters before the Bureau of Internal Revenue, the Board of Tax Appeals, and the Federal courts and holds himself out as an expert in Federal income tax law. In 1936 and for some undisclosed period thereafter Jacob had an office-sharing arrangement with James L. Conley, another attorney. Conley is not experienced in and does not engage in the practice of income tax law.

In June 1936 E. W. Barnes, a client of Conley, held a contract for the purchase of a hotel property known as the Welcome Hotel, which property consisted of land, buildings, furniture, fixtures, and equipment located in Burns, Harney County, Oregon, about 330 miles from Portland. Under the contract Barnes could acquire the hotel property on the payment of \$18,000 in cash, it being understood, however, that the property was to pass with approximately \$22,000 in state, county, [64] and city taxes, both real and personal, standing against it. Barnes was unable to finance the purchase of the property and at the suggestion of Conley took

up the matter with Jacob, who arranged with one of his clients, named Farrell, for a loan of \$15,000. Barnes, Conley, and Jacob agreed that they would advance \$1,000 each; that they would organize a corporation to take title to and operate the property; and that each of them would receive one-third of the stock of the corporation. The corporation, known as the Central Holding Co., was organized under the laws of Oregon on June 20, 1936. Farrell made the loan of \$15,000 as agreed, taking a mortgage on the property as security, and Conley and Barnes borrowed \$3,000 from Jacob to be applied on the purchase price of the property, it being agreed between them that, since Jacob had been instrumental in obtaining the \$15,000 from Farrell, Conley and Barnes should contribute the \$1,000 he was to pay under the original agreement. The loan of \$3,000 was subsequently repaid to Jacob by Barnes and Conley.

The Central Holding Co., sometimes referred to as Central, took title to the hotel property and on July 1, 1936, began its operations. Upon formation of Central, Barnes became president and manager of the hotel. Conley was vice president. He prepared the corporate minutes, kept the stock records, and handled the corporation's legal affairs. Jacob was secretary-treasurer and his duties were to keep the corporation's books of account, except such as were kept at Burns under Barnes' supervision, prepare the corporation's income tax returns, and handle its tax matters.

Central was organized with a capital stock con-

sisting of 300 shares of no par value common stock. One of the conditions upon which Farrell made the loan of \$15,000 was that control of the corporation should be vested in Jacob until the loan was paid. Accordingly at the time of organization a certificate for 100 shares of stock was issued to Jacob; certificates for one share, $26\frac{1}{2}$ shares, and $72\frac{1}{2}$ shares, respectively, were issued to Barnes, and certificates for $26\frac{1}{2}$ shares and $73\frac{1}{2}$ shares, respectively, were issued to Conley; and Conley and Barnes thereupon endorsed their certificates for $26\frac{1}{2}$ shares each and gave them to Jacob, to be returned to them after Farrell had been paid. Barnes endorsed his certificate for $72\frac{1}{2}$ shares to his wife, Olive G. Barnes, and it was placed in Conley's safe, no transfer of the stock being made at that time on the books of the corporation. A few months later, however, the transfer was made on the books and a certificate issued to Mrs. Barnes.

Barnes was the active manager of the hotel at Burns throughout the time it was operated by Central. Because of complaints by Jacob as to Barnes' management, one complaint being that Barnes was extravagant, friction and unpleasantness developed between them. [65]

Central continued to operate the hotel until July 15, 1937, when the main building, together with all of its contents, was destroyed by fire. The boiler room with an apartment above was all that was not destroyed. At the time of the fire Central was carrying fire insurance on the property as follows: \$54,000 on the building with Lloyd's of London,

\$5,000 on the furniture with United Fireman, and \$5,000 on the furniture and \$8,000 on the building with the Lumberman's Underwriter's Association, or a total of \$72,000 on the building and furniture.

Upon learning that the hotel was burning Conley advised Jacob and they had a brief discussion as to the probable future course of the corporation in event there should be a complete destruction by the fire. Jacob expressed the desire, in the event of complete destruction, to discontinue his connection with the corporation. On the second day after the fire Conley went to Burns and Barnes asked him what he and Jacob thought about rebuilding. Conley replied that Jacob wanted "to take his money and get out" but that he, Conley, would join in rebuilding if they could do so without going very heavily into debt. After some discussion Barnes asked that Jacob and Conley give him their stock in the event they did not desire to continue. Conley replied that he was agreeable to the proposal and would submit the matter to Jacob upon his return to Portland. When advised of Barnes' request Jacob also assented to the proposal. Barnes regarded the corporation as more or less of a nuisance but desired to continue its existence because of his belief that corporate financing would be easier than personal financing in the event he should be able to continue in the hotel business.

A few days after Conley's return from Burns Barnes came to Portland. He wanted to rebuild the hotel, but Conley and Jacob told him that they had decided against participation in such a plan. As

a consequence it was decided to distribute the corporation's assets, Conley and Jacob agreeing that they would give their stock in the corporation to Barnes for whatever use he might thereafter care to make of the corporation.

By the time of the fire Central had reduced the state, county, and city taxes standing against its property from \$22,000 to \$16,000 or \$17,000 and the loan from Farrell had also been greatly reduced.

By August 12, 1937, the proceeds of the three insurance policies totaling \$18,000 had been collected and all debts or liabilities of Central, exclusive of state, county, and city taxes, and its Federal income tax, had been paid. The balance due Farrell had been paid prior to the end of July, either from the insurance proceeds or from a bank loan which in turn was paid from the insurance proceeds. After payment of the above items a balance of \$7,266.32 remained [66] and it was decided that this balance should be distributed to the stockholders. Division of this balance into three parts indicated that each group of stockholders was entitled to \$2,422.10. Five thousand dollars had been sent to a bank at Burns, from which Barnes had paid some small debts of Central (\$204.07 to Conley in cash and a note in the amount of \$1,384.08 owing by Conley to the bank) and had transferred \$3,000 to his personal account. Some \$2,600 or \$2,700 had been turned over to Jacob. Since both Barnes and Jacob had received cash in excess of the amount allocable to the stock represented by them, payments were made

by them to Conley in amounts sufficient to equalize the three parts at \$2,422.10. This was accomplished at a meeting of the three on August 12, 1937, at which time each of them signed a receipt to Central showing that \$2,422.10, being one-third of the above net proceeds of insurance, had been received. The receipts signed by Conley and Barnes were signed, "Jas. L. Conley" and "E. W. Barnes", respectively, while the receipt signed by Jacob was signed as follows:

R. T. Jacob

for Agnes C. Jacob

Gwen Jacob

Shirley Jacob

Beverly Jacob

A few days after the above settlement \$54,000, being the amount due under the insurance policy with Lloyd's of London, was received and on August 17, 1937, Barnes, Conley, and Jacob met at the First National Bank in Portland and divided the sum so received, each one receiving \$18,000. In connection with this distribution no receipts were signed. After this second distribution Central was left with no property or assets except the property upon which the hotel at Burns had stood. The value of that property was not in excess of \$10,000, while state, county, and city taxes were outstanding against it to the extent of \$16,000 or \$17,000. The property was later lost to the county in delinquent tax proceedings. As a result of the distribution of the insurance proceeds Central was rendered insolvent and unable to pay its debts.

At or about the time Central was organized and the hotel at Burns was acquired, Jacob showed a picture of the hotel to his wife, Agnes C. Jacob, and his daughters, the other petitioners herein, and told them he was going to give each of them a portion of the stock received by him in the corporation. Shortly after Central was organized he reiterated that promise and took his wife to Burns to see the hotel where they stayed for several days. When the stock of Central was issued, Jacob did not have any of the stock coming to him issued in the names of his wife and daughters but had the entire 100 shares [67] issued in his name. His reason for not having the stock issued to the petitioners at that time was that he had promised Farrell that he would retain control of the corporation until Farrell had been repaid by Central. The 100 shares issued in his name, plus the 26½ shares each issued in the names of Barnes and Conley and by them endorsed and delivered to Jacob, constituted 51 percent of Central's outstanding stock. As soon as the Farrell loan was paid in July 1937, Jacob returned to Barnes and Conley the certificates received from them as indicated. At the same time or shortly thereafter Jacob had the 100 shares of stock standing in his name reissued in five different certificates—one share to himself, 24 shares to his wife, Agnes C. Jacob, and 25 shares each to his three daughters. At the time these certificates were issued his wife and daughters were at the beach. He mailed the certificates to his wife, requesting

that they be endorsed and returned to him. She knew that the certificates received were related to "The Welcome Hotel" and were the shares of stock that Jacob had promised to give to her and their daughters. The shares were endorsed as requested and returned to Jacob within a few days. At no time after the issuance of the 100 shares of Central stock in his name did Jacob consider that he was the beneficial owner thereof but at all times considered that his wife and daughters were the beneficial owners. At the time the fire insurance proceeds were distributed by Central the Jacob stock was owned one share by Jacob, 24 shares by his wife, and 25 shares each by the three daughters.

Jacob retained the certificates endorsed by the petitioners as set forth above in his possession until final distribution of the insurance proceeds on August 17, 1937, after which on either the same day or the day following they were given by him to Barnes. At or about the same time Conley gave his certificates to Barnes and he and Jacob submitted their resignations as directors and officers of Central.

Shortly after the burning of the hotel at Burns, Barnes acquired six lots in Hines, Oregon, on which stood a partially constructed building known as the Hines Hotel. The property had been acquired by Harney County for nonpayment of taxes and was sold to Barnes for \$2,809.27. Barnes took title to the property in his own name, receiving two deeds—one dated August 4, 1937, from the county judge and commissioners of Harney County and

the other a quitclaim deed dated July 24, 1937, from the Pondosa Investment Co., former owner of the property. By quitclaim deed also dated August 4, 1937, Barnes conveyed the property to his wife, Olive G. Barnes. The \$2,809.27 used by Barnes in making the purchase was part of the \$3,000 received by him in the first distribution of insurance proceeds by Central and was covered by the settlement between Jacob, Conley, and Barnes on August 12, 1937. [68]

On November 29, 1937, Barnes and his wife conveyed the Hines Hotel property and certain other lots located in Hines to Central. About the same time Barnes negotiated the purchase of a hotel in Arlington, Gilliam County, Oregon, the purchase to be made in the name of Central. The purchase price was stated at \$50,000 and was to be paid by a purchase money mortgage for approximately \$24,000, the assumption of accrued taxes of approximately \$5,000, the conveyance of the Hines Hotel property and some of the additional lots at \$15,000, and the remainder in cash. The \$15,000 at which the Hines Hotel property and lots at Hines were included was greatly in excess of their actual value. The cash consideration was paid by Barnes and represented a portion of the insurance proceeds received by him from Central on August 17, 1937. While title to the Arlington property was taken in the name of Central under a deed of conveyance dated December 15, 1937, Barnes had requested Conley, who had represented him in the transaction, to have the property transferred to him be-

fore the end of 1937. Conley did not carry out the instructions immediately, however, and the property continued to stand in the name of Central until the September of 1938, when it was conveyed to Barnes or his wife or to both of them.

Central was dissolved on January 6, 1941, by proclamation of the Governor of Oregon and its articles of incorporation were revoked because of its failure for two consecutive years preceding that date to file the statements or pay the license fees required by law.

For the calendar year 1937 Jacob prepared income tax returns for each of his three daughters. On each of the returns was shown a net income of \$3,958.43 and a tax liability of \$106.34. No deductions were shown on the returns and the only item of income on each was shown as having resulted from a sale or exchange in August 1937 of 25 shares of stock in Central, acquired in June 1936. The basis for the stock was shown at \$157.48 and the amount received at \$5,105.52. Only 80 percent of the gain was shown as taxable, on the ground that the stock had been held for more than one year but not over two years. Jacob also prepared the income tax return of Mrs. Jacob for 1937, on which was shown a net income of \$4,734.08 and a tax liability of \$206.72. Of said income \$3,800.10 was shown as having resulted from the sale or exchange in August 1937, of 24 shares of stock in Central, acquired in June 1936 at a cost or other basis of \$151.17, 80 percent of the gain being shown as tax-

able for the reason that the stock had been held for over one year but not over two years. At the time their returns were prepared Gwendolyn E. Jacob and Shirley May Jacob were at school in Dallas, Texas, and Jacob sent the returns to them, with instructions that they be executed and returned to him. The returns were signed and sworn [69] to on March 7, 1938, and returned to Jacob as requested. Beverly Jean Jacob executed her return on March 15, 1938, at the request of Mrs. Jacob. The returns for the three daughters were filed with the collector for the district of Oregon on March 15, 1938. Both Jacob and his wife filed their returns for 1937 on April 15, 1938, extensions of time for such filing having been previously obtained. Jacob's return showed a net income of \$23,048.11 and a tax liability of \$1,975.19. Included in taxable income was an amount of \$15,833.75 shown as gain resulting from the sale or exchange on August 8, 1937, of 100 shares of stock in Central, acquired on June 22, 1936. The basis for the stock was shown at \$629.91 and the amount received at \$20,422.10. Only 80 per cent of the gain was shown as taxable on the ground that the stock had been held for over one year but not over two years. Attached to the return was a statement which reads as follows:

Filed concurrently with this return, which includes all of the profit from disposition of stock of the Central Holding Company, are separate returns of Agnes C. Jacob, Gwendolyn E. Jacob, Shirley May Jacob, and Beverly Jean Jacob, in each of which has also been included proportionate

divisions of the same profits. It is obvious, of course, that the profit is not taxable upon both theories, but this method of reporting the income attributable to the transaction seems to be required by the circumstances. Due to many questions which are presented in connection with gifts, such as motives, date of actual transfer, effectiveness of the gift, etc., there is lack of harmony in the holdings of cases relating to the taxability of the income in such situations, and, if a return were not filed in this manner, and it is ultimately determined that the income is taxable to the undersigned alone, interest would accrue because the tax was not paid upon its due date. On the other hand, if it is determined that the income is taxable to the donees and no returns have been filed, such returns would be delinquent and penalties incurred by reason thereof. Upon completion of payment of the tax, claims for refund will be filed and the rights of the respective claimants thereupon sought to be determined.

The circumstances also seem to require the filing of gift tax returns for the year 1937, although the gifts were in fact purported to have been made in 1936. It was my original purpose to make a division of the shares at the time of the incorporation of the Central Holding Company, but this plan was frustrated in the first instance by conditions imposed by Mr. Robert S. Farrell, who supplied the funds for the purchase of the Welcome Hotel property which gave rise to the profit in question. Mr. Farrell supplied said funds upon the

specific condition that the undersigned retain control of the property thus acquired through the ownership of 51% of the equity therein. This condition is set forth in his letter of May 27, 1936, addressed to me, which reads in part:

“I will loan you and your associates the sum of \$15,000 on the Welcome Hotel at Burns, Oregon, upon the following conditions:

(3) That you own at least 51% of the equity in the property above described.”

Notwithstanding the above referred to exactions, shortly after the formation of the Central Holding Company, I informed the members of my family that I was giving them shares of the corporation's stock. [70]

While this promise was made, it should be pointed out that the stock was in fact neither issued nor delivered to the donees until the latter part of July or the early part of August, 1936, at about the time the mortgage to Mr. Farrell was paid. In this connection, it should also be pointed out that while the certificates were issued and delivered at this time, they were dated as of the date of the original date of incorporation. However, stamps covering two transactions, one from myself to the members of my family and from them to Barnes, were affixed to photostatic copies of said certificates retained by me.

The tax liabilities shown on the income tax returns of Jacob, Mrs. Jacob, and the daughters were paid in installments during 1938.

On April 20, 1938, Jacob filed with the collector a gift tax return signed and sworn to by him on April 15, 1938, which return showed no tax liability. In this return he reported the gift to Mrs. Jacob of 24 shares of stock in Central of a value of \$4,901.30 and showed love and affection as his motive for making the gift. He also reported the gift to each of his daughters of 25 shares of stock in Central of a value of \$5,105.52 and showed "College Educations" as his motive or making the gifts. Attached to the return was an affidavit executed by him on April 15, 1938, which reads as follows:

I Robt. T. Jacob, being first duly sworn, depose and say:

That failure to file the gift tax returns to which this affidavit is affixed within the time required by law, was not due to any intent to evade taxation or to avoid responsibility therefor, but, in accordance with the facts set forth in connection with income tax returns filed concurrently herewith, it is my belief that the gifts were in fact made in 1936. Due to the fact that the stock was purchased in 1936 at a nominal consideration, its value was not sufficient to require the filing of a return in that year, but should I be mistaken in my position, and if the gift was not in fact consummated until 1937, then its value requires the filing of returns on Forms 709-710. Accordingly same are submitted herewith.

No extension of time for filing was requested as affiant was neither sick nor absent.

On April 20, 1938, there were filed with the col-

lector information returns of gifts, prepared by Jacob, for Mrs. Jacob and the daughters. On their returns each daughter reported the gift to her in 1937 of 25 shares of stock in Central of a value of \$5,105.52. On her return Mrs. Jacob similarly reported the gift to her of 24 shares of stock in Central of a value of \$4,901.30. The returns of Shirley May and Gwendolyn E. Jacob were dated May 23, 1938, while those of Mrs. Jacob and Beverly Jean Jacob were dated March 13, and March 14, 1938, respectively.

In December 1938 a revenue agent made an investigation of the 1937 income tax returns of Jacob, Mrs. Jacob, and the daughters. In his reports he concluded that the gain on the stock in Central was taxable to Jacob and that Mrs. Jacob and the daughters received [71] gifts of the proceeds from the liquidation of Central rather than gifts of stock. As to the daughters, he found that they had no tax liability for 1937 and recommended refunds of the taxes paid by them. As to Mrs. Jacob, he recommended a refund of \$173.10 based on the elimination from her income of the gain on Central stock. The refunds thus recommended were made by the Commissioner in 1939.

Upon organization Central adopted a fiscal year ending June 30. Jacob prepared its income tax return for the year ended June 30, 1937. Barnes signed and filed the return with the collector for the district of Oregon on September 15, 1937. The return showed a net income of \$3,681.90 and a tax liability of \$578.59. For the fiscal year ended June

30, 1938, Barnes had an income tax return prepared for Central and filed it with the collector on September 15, 1938. This return showed a net income of \$29,950.20 and a tax liability of \$6,007.82. The income reported was shown as gain resulting from the fire which destroyed the hotel on July 15, 1937. Upon an audit of the return for the fiscal year ended June 30, 1937, the respondent determined that the correct net income for the year was \$17,768.01, that there was a deficiency in tax of \$5,312.50, and that the corporation was liable for the 50 percent penalty in the amount of \$2,656.25. As a result of the audit of the return for the fiscal year ended June 30, 1938, the respondent determined that the correct net income was \$41,328.53 and that there was a deficiency in tax of \$2,974.36. On March 17, 1939, he sent a notice to Central advising it of his determination of the above mentioned deficiencies. Thereafter Central filed a petition with the Board for redetermination of the deficiencies for both years. Also on March 17, 1939, the respondent sent notices to Jacob and Conley and to Barnes and his wife advising them of his determination of the above deficiencies and penalties against Central and advising that he proposed to assess such deficiencies and penalties against them as transferees of Central. Jacob and Conley and Barnes and his wife thereafter filed petitions with the Board alleging error in the respondent's determination.

Jacob filed his petition on June 10, 1939, and assigned errors not only as to the respondent's de-

termination of the deficiencies in tax and penalty against Central, but also as to his determination that Jacob was liable for such deficiencies as a transferee of Central. In this petition which was duly verified before a notary public on June 8, 1939, Jacob alleged that prior to the issuance of any shares of stock in Central he promised to make a gift of the shares to his wife and daughters in equal amounts; that pursuant to the requirements of Farrell respecting his loan he continued to hold the 100 shares of stock issued to him until the loan was repaid; that shortly after the [72] fire, but before repayment of the Farrell loan, he (Jacob), acting on behalf of Mrs. Jacob and the daughters, entered into an agreement with Barnes whereby the latter agreed to purchase the 100 shares of stock which he (Jacob) was holding in trust for Mrs. Jacob and the daughters, at an amount equal to the value thereof as determined by an accounting; that after the payment of the Farrell loan and in pursuance of his agreement to give stock to Mrs. Jacob and the daughters, he (Jacob) surrendered the certificate for 100 shares of stock in Central and caused to be executed and delivered in lieu thereof a certificate for one share to himself, a certificate for 24 shares to Mrs. Jacob, and certificates for 25 shares to each of the daughters; that Barnes had a statement prepared of the accounts of the corporation and he (Jacob) accepted payment for the shares in accordance with the corporation's net worth as shown by such statement, receiving \$2,422.10 on or about August 12, 1937, and \$18,000

on August 17, 1937; and that at the time of payment of the \$18,000 he delivered to Barnes the above mentioned certificates of stock which had been issued to himself, Mrs. Jacob, and the daughters, all of which had been endorsed by the respective owners thereof. In his answer the Commissioner denied the foregoing allegations and among other things affirmatively alleged that at the time of the distribution on August 17, 1937, Jacob was a stockholder in Central and that as such stockholder there was distributed to him on that date, without consideration, cash in the amount of \$20,422.10. In his reply Jacob denied the foregoing affirmative allegations of the Commissioner.

All of the above proceedings came on for hearing before the Board on November 29, 1939, at Portland, Oregon, when Carl E. Davidson, Esq., and Ivan F. Phipps, Esq., appeared as counsel for Central, Conley, and Barnes and Mrs. Barnes, S. J. Bischoff, Esq., appeared as counsel for Jacob, and T. M. Mather, Esq., appeared as counsel for the Commissioner. On November 30, 1939, and after the introduction of certain evidence respecting the issue of fraud in the case of Central, but before the production of evidence as to transferee liability of the other parties, the following occurred:

Mr. Davidson: May it please your Honor, in the case of the Central Holding Company, as a result of conversations between counsel and some adjustments in the tax liability as a result of disclosures yesterday where capital amounts and loans were erroneously included in income, while the petitioner

in this case does not wish to admit the fraud penalty, however, for the purpose of closing the case, it has been agreed between counsel for the respondent and counsel for the petitioner that the Board may enter its decision that there is a deficiency in income tax for the year ended June 30, 1937, in the sum of \$2,528.72; that there is a deficiency in excess profits tax for the fiscal year ended June 30, 1937, in the sum of \$881.62; that there may be asserted a 50% penalty in the amount of \$1,264.36 upon the deficiency in income tax for that year, and a 50% penalty in the amount of \$440.81 on the deficiency in excess profits taxes for that year. [73]

It is further stipulated between the parties that there is a deficiency for the fiscal year *end* June 30, 1938, which is also before the Board, in the sum of \$1,875.48 in income taxes, and of \$1,098.88 in excess profits taxes.

The Member: Does the government stipulate that the case may be disposed of by the entry of a decision to that effect?

Mr. Mather: Just one moment, your Honor. That is correct, your Honor.

The Member: Mr. Bischoff?

Mr. Bischoff: In the case of Robert T. Jacob, Docket No. 99161, the petitioner, as a result of the same conference that was referred to by counsel, and since the transferor has stipulated that a deficiency may be determined in the amount just set forth for taxes and penalties, and since your Honor has ruled that the transferees are precluded from challenging the transferor's liability, pursuant to the

stipulation of the transferor, the petitioner, Robert T. Jacob, while denying the amount of deficiency and the liability for penalty of the transferor, admits that he is transferee, and the decision may be entered against him in the amount set forth in the statement of counsel for the taxpayer.

The Member: What is the situation with regard to the other transferees? Of course, the transferees are jointly and severally liable.

Mr. Davidson: In the case of E. W. Barnes, Transferee, Olive G. Barnes, Transferee, and James L. Conley, Transferee, Docket Numbers 99256, 99257, and 99259, while the transferees do not admit the fraud penalty, inasmuch as it is admitted that a penalty may be entered in the transferor's case, they are foreclosed from contesting that, and they do admit they are transferees, and they consent that the Board may enter its decision in finding a liability for the amount of the deficiency assessed against the transferor in the Central Holding Company case.

The Member: Do I understand that the transferee is admitting any interest that may be due?

Mr. Davidson: The deficiency would necessarily carry the interest.

The Member: That disposes of this group of cases entirely?

Mr. Mather: That is my understanding.

Pursuant to the stipulation in the case of Central the Board on December 5, 1939, entered its decision determining deficiencies and penalties for the fiscal years ended June 30, 1937, and June 30, 1938,

as stipulated. On the same day it entered its decisions in the cases of Jacob, Conley, and Barnes and Mrs. Barnes determining that each of them was liable as a transferee of assets of Central for the deficiencies found against Central but failed to provide in the decisions for interest thereon.

The tax liability of \$6,007.82 shown on Central's return for the fiscal year ended June 30, 1938, at the time it was filed, was assessed on October 13, 1938, but no part of it has ever been paid. Notice and demand for the tax was issued by the collector on October 6, 1938, and a second notice and demand was issued on October 18, 1938. On November 9, 1938, a warrant for distraint was issued and on March 7, 1939, lien was filed with the Clerk of the United States District Court at Portland and with the County Clerks of Multnomah County (Portland), Harney County (Burns), and Gilliam County (Condon). Efforts of the collector to collect the tax have been fruitless. [74]

On March 1, 1940, the Commissioner filed with the Board in each of the cases of Jacob, Conley, and Barnes and Mrs. Barnes a motion to vacate the decision entered therein on December 5, 1939, and asking (1) that decisions be entered against each of the parties for transferee liability in an amount equal to the unpaid portion of the original tax shown on the returns of Central for the fiscal years ended June 30, 1937, and June 30, 1938, plus the amounts shown in the Board's decisions entered on December 5, 1939, including penalties and interest as provided by law or in the alternative; (2)

that the Board vacate and hold for naught the decisions entered on December 5, 1939, and place the proceedings on the calendar for further hearing under Rule 50 in order to permit him to offer formal proof as to the actual total amount of the transferee liability of each of the parties for said fiscal years and to make claim therefor to the extent that said total amount of such liability exceeded the amounts shown in his deficiency notices and in the Board's decisions of December 5, 1939; or, as a second alternative, (3) that the Board vacate its decisions of December 5, 1939, and set the proceedings down for hearing de novo. It was stated in the motions that a portion of the original tax shown on Central's return for the year ended June 30, 1937, and the entire amount of \$6,007.82 shown on its return for the year ended June 30, 1938, had not been paid, although demand had been made therefor; that Jacob, Conley, and Barnes and Mrs. Barnes, as transferees of assets, were liable for such taxes; that when the stipulations respecting the transferee liability of the parties were entered into counsel for the Commissioner was unaware of the fact that said original taxes had not been paid but that fact was known to said parties; and that counsel for the Commissioner had only recently learned of the nonpayment of the original taxes. On March 4, 1940, the Board vacated its decisions entered on December 5, 1939, in the cases of Jacob, Conley, and Barnes and Mrs. Barnes and ordered the parties to file with the Board briefs in support of or against the Commissioner's motion. Briefs were filed and

at the time the Commissioner filed his brief, on March 27, 1940, he also filed motions for leave to file amended answers. At the time he filed his brief Jacob also filed an affidavit in opposition to the Commissioner's motion to vacate the decisions entered on December 5, 1939. In this affidavit he admitted that at the time of the negotiation and entry of the compromise stipulation of settlement, he and his counsel knew that a portion of the tax shown on Central's return for the year ended June 30, 1937, and all of the tax shown on the return for the year ended June 30, 1938, had not been paid, and stated that no inquiry was made by counsel for the Commissioner as to whether such taxes had been paid, and that he assumed counsel for the Commissioner had knowledge of such fact, and that at the time the compromise [75] stipulation of settlement was negotiated and entered of record there were present at the hearing, among others connected with the Bureau of Internal Revenue, the following persons: J. W. Maloney, collector of internal revenue for the district of Oregon, Walter S. Shanks, chief field deputy in the office of said Collector, and R. P. Kueneke, chief of the income tax department of the collector's office, who had in his immediate possession the records from which the payment or non-payment of such taxes was ascertainable.

On April 9, 1940, the Board denied the Commissioner's motions filed March 1, and March 27, 1940, and on April 10, 1940, entered its decisions holding that Jacob, Conley, Barnes and Mrs. Barnes each was liable as transferee of assets of Central for the

deficiencies determined in the decision entered in the case of Central on December 5, 1939, together with interest as provided by law. Jacob has paid his total liability as transferee as thus determined by the Board.

On April 8, 1941, the Commissioner sent notices to the petitioners herein, advising them of his proposal to assess against them as transferees of Central the amounts involved herein with respect to the unpaid income and excess profits taxes of Central for the year ended June 30, 1938.

In 1937, Jacob for these petitioners, and without consideration, received from Central the following indicated amounts of assets, leaving it insolvent and unable to pay its debts:

Agnes C. Jacob.....	\$4,901.30
Shirley May Jacob.....	5,105.52
Beverly Jean Jacob.....	5,105.52
Gwendolyn E. Jacob.....	5,105.52

OPINION

Turner: But for the lack of coordination on the part of certain of respondent's employees in their efforts to determine and collect the income and excess profits taxes owing by Central, the existence of friction between the stockholders or persons responsible for Central's affairs and the lack of candor on the part of these same individuals in their dealings with each other and with their Government in the matter of Central's tax liability, these proceedings should have been entirely unnecessary. The question in issue is the liability of the petitioners as transferees of Central for the income and excess profits taxes reported by

Central on its return for the fiscal year ended June 30, 1938. That Central was liable for and owed the tax is not disputed and so far as the record shows has never been disputed. The taxes in question resulted in the main from gain realized through the collection of the fire insurance on Central's principal asset, the hotel at Burns. Without making any provision for pay- [76] ment of income and excess profits taxes on the profits so realized, the insurance proceeds were distributed to or for the benefit of the stockholders, leaving Central with no assets except the real estate at Burns, against which stood local taxes far in excess of its value.

The petitioners make a number of contentions: (1) that they never became the owners of the Central stock and furthermore that the stock was sold by Jacob to Barnes and the money received was not received as a distribution by Central but in payment by Barnes for the Jacob stock; (2) that by reason of the prior determination that Jacob, not these petitioners, was the owner of the Central stock, and the subsequent settlement of the transferee proceeding brought by Jacob resulting in entry of decision by the Board to the effect that Jacob was liable as transferee of Central, the respondent made an irrevocable election to treat Jacob as the owner of the Central stock and is now estopped from claiming that the petitioners were the owners thereof and transferees of Central; (3) that if it be held that there was no sale of the stock and the amounts received in respect of such stock were received in liquidation, then Jacob, not the petitioners,

was the transferee, since the amounts received in liquidation were not and have not been physically turned over by Jacob to them; (4) that respondent has failed to show that petitioners are transferees of a transferee of Central; and (5) that he has also failed to show that either Central or Jacob was insolvent at the time of the transfer of the assets as claimed by respondent.

We find no merit in the claim that the stock involved in these proceedings was sold to Barnes and that the money received in connection therewith was not received in liquidation of Central. The facts are that Jacob, whether acting for himself or for the petitioners, with Conley decided not to continue in the hotel business with Central or otherwise. They could see a most attractive cash profit as the result of the fire and decided to take it out. From the insurance proceeds they paid the debt to Farrell and certain other obligations of Central and then distributed the balance in three parts to the stockholders, leaving Central in an insolvent condition. Barnes had no intention or thought of buying either the Conley or Jacobs stock. There was simply a division of the available assets, which in this case happened to be cash. Barnes had some idea that if he might control the corporate shell it might be of some use to him in financing the acquisition of another hotel through the use of a portion or all of the money he had received from Central, but it is perfectly plain that he had no intention that Central should own or conduct any hotel business subsequently acquired by him. It is true

that Barnes did thereafter convey certain properties at Hines, Oregon, to Central and that when the hotel at Arlington was acquired title to that [77] property was taken in the name of Central, but at the time of acquisition Conley was instructed to have title transferred to Barnes within the fifteen days following. It seems that at some point Jacob had advised Barnes and Conley that Central and indirectly its stockholders would be saved some tax on the insurance proceeds through the application of section 112 (f) of Revenue Act 1936, if Barnes should take title, even though temporary, to subsequently acquired properties in the name of Central, and the petitioners apparently take the view that the above acts of Barnes were prompted by the advice of Jacob and constitute evidence that Barnes purchased the Jacob and Conley stock with a portion of the insurance proceeds in some manner withdrawn by him from the corporation, that Barnes' share of the insurance proceeds was not withdrawn but continued as assets of Central, and that the sums received by Jacob and Conley did not therefore constitute distributions by Central to its stockholders. There is some confusion between Jacob, Barnes, and Conley as to the exact character of the advice originally given by Jacob with respect to the Federal income tax liability of Central and as to the exact time when a letter by Jacob quoting section 112 (f), *supra*, was written and mailed to Barnes. Whatever the facts in that regard, it is apparent that neither Barnes nor Conley understood the advice as Jacob says it was given

and, even though we should accept the Jacob version as to the advice actually given, the understanding of Conley and Barnes clearly negatives the interpretation sought to be placed upon Barnes' acts by the petitioners. Barnes took down a pro rata part of the net insurance proceeds just as Conley and Jacob did. On the evidence we think it perfectly clear that the net insurance proceeds were distributed to or for the Central stockholders and no part thereof may be regarded as having been paid for the Jacob or Conley stock by Barnes.

There are numerous claims in the brief of the petitioners that Jacob, and not the petitioners, was the owner of the Central stock and that the respondent has failed to sustain his burden of proving that the petitioners did own the said stock. Even though it be said that the respondent did have the burden of proving that the petitioners were the owners of the Central stock, and regardless of any evidence that respondent may have offered, it appears that Jacob, the petitioners' witness, has carried that burden for him. Obviously, Jacob knew more than any other person concerning the ownership of the Central shares originally issued in his name, and at no place in his testimony did Jacob ever state that he and not the petitioners were the owners of the stock. To the contrary, he testified in response to questions by counsel for the respondent that he at all times regarded the petitioners as the beneficial owners thereof. He testified [78] that about the time the Welcome Hotel was acquired he advised the petitioners that he was going to

give each of them a portion of the stock and that his only reason for not having the stock issued in their names when the corporation was organized was his agreement with Farrell to hold control of Central until the indebtedness to Farrell should be paid. The name Central Holding Co. did not impress itself upon the minds of the petitioners but they were familiar with the subject matter of the gift in that they knew it represented the interest Jacob was acquiring in the Welcome Hotel at Burns. These petitioners had confidence in and trusted Jacob and believed that he would look after their interests. They had had no business experience and anything affecting their business affairs was left entirely to Jacob, the husband and father. As soon as sufficient of the insurance proceeds had been collected the indebtedness to Farrell was paid and immediately Jacob, even though it had already been decided to liquidate Central by the distribution of the insurance proceeds, had 99 of the 100 Central shares standing in his name transferred, 25 shares to each of his daughters and 24 shares to his wife. Such action on the part of Jacob is certainly in harmony with the claim of the respondent that the petitioners were the owners of the stock and with the testimony of Jacob that at all times he regarded them as the beneficial owners thereof. Mrs. Jacob, when she received the certificates at the beach accompanied by Jacob's request that they be endorsed and returned to him, recognized the said certificates as representing the shares of stock which Jacob had promised to give to her and the three daugh-

ters. If the issuance of the shares in the names of these petitioners was not intended to evidence actual ownership, then Jacob needlessly put himself and petitioners to much unnecessary trouble and his action in having the stock so issued was without purpose and without meaning. Furthermore, the act of the petitioners in endorsing the certificates and returning them to Jacob as requested is not out of harmony with the conclusion that the stock did belong to the petitioners. They looked to and expected Jacob to handle their business transactions. Accordingly, we find no occasion to repudiate for the petitioners the testimony of a witness which they themselves have called. On the record before us we conclude that the petitioners were the owners of 99 shares of Central stock at the time the fire insurance proceeds were distributed, 24 shares belonging to Agnes C. Jacob, and 25 shares each to the daughters.

In the contention that the respondent made an irrevocable election to treat Jacob as the owner of the Central shares and is accordingly estopped to assert transferee liability against these petitioners as the owners of such shares, we likewise find no merit. It is true that the respondent, upon examination of the income tax returns of the peti- [79] tioners for the year 1937, did conclude that they were not the owners of the Central shares and did not therefore realize gain upon the distribution by Central of the net insurance proceeds. These proceedings, however, are transferee proceedings calling for determination, not of the individual in-

come tax liability of the petitioners, but of their liability as transferees for income tax owing by Central. We find no basis in fact or law for application of the doctrine of estoppel and certainly there can be no proper claim of *res judicata*. Not only must estoppel be pleaded, but the party invoking estoppel must prove the facts to support it. *Helvering v. Brooklyn City Railroad Co.*, 72 Fed. (2d) 274; *Commissioner v. Yates*, 86 Fed. (2d) 748. In the instant case the petitioners have not shown that they have in any way been damaged or misled to their detriment by the respondent and the claim of estoppel falls. To support a finding of *res judicata* the action in which the finding is sought must involve the same parties, the same facts, the same law. Here the petitioners rely for what they term estoppel by judgment upon the settlement of the transferee proceeding brought by Jacob to determine his liability as transferee for a deficiency in the income tax of Central for the fiscal year 1938 and upon the entry of decision by the Board giving effect to the settlement agreed to by the parties. In the instant case the tax involved is also income tax of the Central for 1938, to be exact, the tax reported by Central on its income tax return for the fiscal year 1938, but there the similarity ends. Here the petitioners are Agnes C. Jacob, Shirley May Jacob, Beverly Jean Jacob, and Gwendolyn E. Jacob, not Robert T. Jacob, as in the prior case, and the liability to be determined is their liability, not that of Jacob. *Tait v. Western*

Maryland Railway Co., 289 U. S. 620, relied on by the petitioners is clearly distinguishable. There the parties, namely, the United States and the Western Maryland Railway Co., as well as the facts and the law, were the same in the current case as in the prior case, while the petitioners here have never before been parties to any litigation involving their liability as transferees of Central for 1938 or any year and their claim, whether it be termed estoppel by judgment or *res judicata*, is without the necessary factual and legal support.

There is the further contention that the petitioners may not be held liable as transferees of Central because Jacob personally received the money distributed and at no time physically delivered any part of it to them. As to his reason for not delivering the money received to his wife and daughters, Jacob testified that in making the gifts of the shares of stock he did not have in mind gifts of cash or "turning over to them the cash which was realized unexpectedly" and felt that "it would be unwise, as a matter of fact, to turn over to them [80] the cash." It is to be noted, however, that he did not testify that the money did not belong to his wife and daughters or that he did not receive it for them. We have already pointed out that Jacob, on cross-examination, testified that he at all times considered that his wife and daughters were the beneficial owners of the Central stock issued to him, and we have found as a fact that they were the owners of 99 shares of the said stock at the time the fire insur-

ance proceeds were distributed. There is nothing in Jacob's failure physically to turn over the money to the petitioners that is necessarily inconsistent with their ownership of the stock or the money. The testimony of Jacob and the petitioners plainly shows that in all matters business and financial in which these petitioners were interested Jacob acted for them and, not only were they agreeable to his doing this, but they expected it of him. Furthermore, in the signing of the receipt of August 12, 1937, Jacob definitely established his relationship to the money. The money received by Jacob from Central was received for these petitioners and not for himself. The facts here are altogether different from the facts in *W. R. Ross*, 43 B.T.A. 1155, where Ross received the assets of the transferor corporation as his own and not for other individuals "considered" as owning said shares of stock. It is our opinion and we conclude that the petitioners are liable as transferees of Central to the extent of their respective shares of the amounts received by Jacob for them. Sec. 311, Revenue Act of 1936. The liability having attached under the statute, any subsequent appropriation by Jacob to his own use of the funds so received by him for the petitioners can not affect their liability herein.

That the distribution of the insurance proceeds by Central left it insolvent has been found as a fact, and the conclusion that the petitioners were transferees of Central within the meaning of the statute eliminates any necessity for considering their

claim that the respondent has failed to prove that they were the transferees of a transferee.

Decisions will be entered under Rule 50.

[Seal] [81]

United States Board of Tax Appeals
Washington

Docket No. 108032

AGNES C. JACOB (Alleged Transferee),
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the Findings of Fact and Opinion of the Board promulgated July 23, 1942, the respondent on August 18, 1942, filed a proposed recomputation of tax in accordance therewith, and this proceeding having been called from the Day Calendar of September 30, 1942, for settlement under Rule 50, at which time the petitioner entered no objection to the proposed recomputation, it is

Ordered and Decided: That there is an unpaid liability on the part of this petitioner as transferee of the assets of the Central Holding Company, transferor, for income and excess profits taxes due for the fiscal year ended June 30, 1938, in the re-

spective amounts of \$2,581.09 and \$2,320.21, with interest as provided by law.

(Signed) BOLON B. TURNER

Member.

Enter:

Entered Oct. 2, 1942. [82]

The Tax Court of the United States

[Title of Cause.]

PETITION FOR REVIEW OF UNITED
STATES BOARD OF TAX APPEALS
DECISION

To the Honorable Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

The petition of Agnes C. Jacob respectfully shows:

I.

STATEMENT OF CONTROVERSY

The contention of the parties out of which this controversy arises is as follows: Respondent asserts that the petitioner received funds from Central Holding Co. (taxpayer) upon an alleged liquidation of said corporation; that Central Holding Co. was insolvent at the time of the alleged distribution, or was rendered insolvent thereby; that the corporation was indebted to respondent for unpaid income and excess profits taxes for the taxable year ended June 30, 1939, in the sum of \$6,007.82 plus interest, and that by reason thereof petitioner

was liable as a "transferee" to the extend of the funds alleged to have been received by petitioner.

Petitioner contends that she did not receive from the Central Holding Co. any funds or assets of any kind or character whatsoever, directly or indirectly; that she did not receive, directly or indirectly, from Robert T. Jacob, any funds or assets which had been the [83] property of the Central Holding Co.; that Robert T. Jacob did not receive any funds or assets from the Central Holding Co.; that the funds received by him were paid to him by E. W. Barnes for the sale by Robert T. Jacob to E. W. Barnes of 1/3 of the capital stock of the Central Holding Co.; that the Central Holding Co. was not insolvent at said time or rendered insolvent thereby; that Central Holding Co. was not liquidated at the time that Robert T. Jacob sold the stock to E. W. Barnes as aforesaid; that the funds received by Robert T. Jacob were not paid in liquidation of said corporation; that the said corporation continued for a long time thereafter to be a going concern and was thereafter engaged in the operation and management of a hotel property and purchased and was the owner of hotel property thereafter; that prior to the mailing of the deficiency letter to your petitioner asserting said transferee liability against her, respondent duly determined that your petitioner was not a transferee of any of the assets of said corporation and that Robert T. Jacobs only was such transferee; that thereafter respondent asserted a transferee liability against the said Robert T. Jacob and mailed

to the said Robert T. Jacob a deficiency letter and notice that he was liable as transferee of the assets of the said corporation based upon the receipts by said Robert T. Jacob of the same funds now alleged to have been received by your petitioner; that the said Robert T. Jacob appealed from said determination and assessment to the Board of Tax Appeals; that the said proceeding duly came on for trial before said Board of Tax Appeals; that during the course of the trial of said proceeding petitioner and respondent agreed to settle and [84] compromise the said controversy and a stipulation was entered of record in which it was, among other things, stipulated that Robert T. Jacob was the transferee of the fund in question and that a decision might be entered against him as such transferee; that the funds for which the said Robert T. Jacob became liable as transferee are the same funds for which respondent now seeks to hold petitioner liable as transferee; that by reason of the premises petitioner was not a transferee or a transferee of a transferee of any of the assets of said corporation; that the said issues were determined in the aforesaid proceedings and the respondent is thereby estopped from now asserting that petitioner is a transferee of the same fund.

That on April 8, 1941, respondent mailed to petitioner a deficiency notice that there would be assessed against her the amount of \$2693.68 income tax, and the amount of \$2207.62 excess profits tax, plus interest as provided by law; alleging same to constitute petitioner's liability as transferee of as-

sets of Central Holding Co. as unpaid income and excess profits taxes due from said Central Holding Co. for the taxable year ending June 30, 1938; that thereafter your petitioner filed with the United States Board of Tax Appeals her petition for a redetermination of the deficiency asserted as aforesaid; that on the 23rd day of July, 1942 the United States Board of Tax Appeals made and entered its findings of fact and opinion approving the deficiency as determined by the respondent holding petitioner liable as transferee in the sum of \$2581.09 income tax and the sum of \$2320.21 excess profits tax with interest thereon; and on the 2nd day of October, 1942 the Board of Tax Appeals entered and filed its decision thereon.

The petitioner being aggrieved by said findings of fact, opinion, decision, and order, files this petition for a review thereof in [85] accordance with the provision of Section 1001 of Act of Congress approved February 26, 1926, entitled "Revenue Act of 1926."

II.

DESIGNATION OF COURT OF REVIEW

That your petitioner is an individual resident of the state of Oregon and within the jurisdiction of the United States Circuit Court of Appeals for the Ninth Circuit, within which is located the office of the Collector of Internal Revenue with whom your petitioner has at all times mentioned herein made and filed her Federal Income Tax returns and does hereby designate the said Circuit Court of Appeals

for the Ninth Circuit as the court in which a review of said determination is sought.

III.

ASSIGNMENT OF ERRORS

A. The Board of Tax Appeals erred in holding that the Appellant was a transferee of assets of Central Holding Co., (taxpayer) because

(1) The uncontradicted evidence is that appellant received no assets whatsoever of the Central Holding Co.

(2) The undisputed evidence is that Robert T. Jacob alone received the funds alleged to have been transferred; that said Robert T. Jacob at all times retained the said funds as his own and holds the same adversely to the appellant; that appellant had no knowledge of the receipt of the funds by said Robert T. Jacob; that said Jacob did not receive the funds at their request or for their use or benefit, but received and retained the same for his own account, use and benefit.

B. The Board of Tax Appeals erred in refusing to hold

(1) that transferee liability (being a proceeding in rem) can not be imposed upon anyone who did not actually receive the res that is being followed in the transferee proceeding and [86]

(2) That Robert T. Jacob could not impose upon or create a personal liability against appellant by constituting himself a voluntary or gratuitous trustee or agent, as long as he retains the res,

and he claims and holds the same adversely to appellant; that even if appellant had a right to recover the fund from Jacob, such right could not subject her to personal liability as transferee until she actually acquired possession of the res.

C. The Board erred in holding that the transaction which resulted in the receipt of the funds in question by Jacob constituted a liquidation of the Central Holding Co. (taxpayer), and a division of its assets; and it further erred in refusing to hold that Jacob received the fund from E. W. Barnes (not the corporation) in payment of the sale of the capital stock by Jacob to E. W. Barnes.

D. The Board erred in holding that the Central Holding Co. (taxpayer) became insolvent by reason of the receipt of the fund in question by Robert T. Jacob and in refusing to hold that the taxpayer had sufficient property at said time and subsequent thereto with which to liquidate all its tax liability.

E. The Board erred in refusing to hold that appellee failed to exhaust his remedies against the taxpayer prior to proceeding against appellant as alleged transferee and that if the remedies against the taxpayer had been pursued the tax liabilities in question could have and would have been satisfied by taxpayer.

F. The Board erred in failing to find that appellee did not exhaust his remedies against the taxpayer corporation, and without a finding [87] of fact in favor of appellee in this respect the decision of the Board can not be sustained.

G. The Board erred in holding appellee was not estopped from proceeding against appellants as alleged transferee by the following former determinations;

(1) The determination of the Commissioner that appellant was not transferee and the refund of the income tax paid by petitioner based upon such determination and

(2) The decision rendered by the Board of Tax Appeals in the proceeding in which Robert T. Jacob was charged with and held to be the transferee of the funds in question being proceeding in the Board of Tax Appeals Docket No. 99161.

H. The Board erred in admitting in evidence respondent's exhibit K over appellant's objection.

I. The Board erred in admitting over appellant's objection the following evidence and in refusing to strike the same as follows:

(Mr. Pigg, continuing): What next did you do with it?

A. I wrote a letter to our deputy.

Mr. Bischoff: I object to that on the ground that the action taken on the warrant cannot be shown that way, and can only be shown by the return required by law to be made on the warrant.

The Member: The objection is overruled.

Mr. Bischoff: Note an exception.

The Member: An exception is noted. However, I don't see any necessity for going into details. You got the warrant that day?

The Witness: Yes.

The Member: What did you do with it, and what happened? [88]

The Witness: I wrote a letter to our Deputy at Pendleton asking him to call upon the taxpayer.

Mr. Bischoff: I will object to that as incompetent. The writing is the best evidence.

The Member: Are you objecting?

Mr. Bischoff: Yes.

The Member: The objection is overruled. Go ahead and tell me what you did with it.

The Witness: And then I personally called upon a Mr. Phipps in the American Bank Building, who is said to be counsel for the taxpayer, and asked him what the prospect of collection of the account was.

Mr. Bischoff: I move to strike that as incompetent, and as not binding upon the petitioners in this case.

The Member: The motion is denied.

Mr. Bischoff: Exception.

The Member: Exception noted. Go ahead.

The Witness (continuing): Then I next called on a deputy in the office by the name of McEntee,—

Mr. Bischoff: I object to that.

The Member: Just a moment. If you want to make an objection, you may move to strike everything afterwards. I am asking this question.

The Witness (continuing): I called upon one of the officers,—I asked him to call upon

one of the officers of the corporation at Arlington who, I believe, was in the Vendome Hotel there, and I asked him to make an appropriate investigation of the corporation's assets for the purpose of determining whether or not the tax could be collected; and the report of that deputy was in the negative, that the corporation was found to have an indebtedness in excess of the assets.

Mr. Bischoff: I move to strike.

The Member: Is that the answer to my question?

The Witness: Yes.

The Member: That concludes your statement? [89]

The Witness: Yes.

Mr. Bischoff: I move to strike the answer as incompetent, irrelevant and immaterial, and as hearsay on the ground that the action taken upon the warrant of distraint can only be established by the returns which are required to be made, endorsed thereon, by law.

The Member: The motion to strike is denied.

Mr. Bischoff: Note an exception.

The Member: Exception noted.

J. The Board erred in admitting oral testimony and exhibits pertaining to the income tax return of the Central Holding Co. for the year ended June

30, 1937 and in refusing to strike the same on appellant's motion.

AGNES C. JACOB

Petitioner.

(Duly Verified.)

[Endorsed]: T. C. U. S. Filed Dec. 28, 1942.

[90]

[Title of Court and Cause.]

NOTICE OF FILING OF PETITION
FOR REVIEW

J. P. Winchell, Esq., Chief Counsel, Bureau of
Internal Revenue.

Please take notice that the petitioner, Agnes C. Jacob, on the 28th day of December, 1942 filed with the clerk of the United States Court of Tax Appeals her petition for review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision and order of said Board heretofore rendered in the above entitled cause. A copy of said petition for review is hereunto attached and served upon you.

Dated this 28th day of December, 1942.

(s) S. J. BISCHOFF

1115 Public Service Building
Portland, Oregon

Attorney for Petitioner

Personal service of the foregoing notice together with a copy of the petition for review is hereby ad-

mitted and accepted this 28th day of December, 1942.

(s) J. P. WENCHEL
Chief Counsel,
Board of Internal Revenue
Attorney for Respondent

[Endorsed]: T. C. U. S. Filed Dec. 28, 1942.

[91]

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 108032

AGNES C. JACOB,

Appellant,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Appellee.

No. 108033

SHIRLEY MAY JACOB,

Appellant,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Appellee.

No. 108034

BEVERLY JEAN JACOB,

Appellant,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Appellee.

No. 108035

GWENDOLYN E. JACOB,

Appellant,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Appellee.

STATEMENT OF POINTS ON WHICH APPELLANTS INTEND TO RELY ON APPEAL.

The appellants hereby designate as the points on which they intend to rely on these appeals as follows:

A. The Board of Tax Appeals erred in holding that the appellants were transferees of assets of Central Holding Co. (taxpayer), be- [92] cause

(1) The uncontradicted evidence is that Robert T. Jacob alone received the funds alleged to have been transferred; that said Robert T. Jacob at all times retained the said funds as his own and holds the same adversely to the appellant; that appellants had no knowledge of the receipt of the funds by said Robert T. Jacob; that said Jacob did not re-

ceive the funds at their request or for their use or benefit, but received and retained the same for his own account, use and benefit.

B. The Board of Tax Appeals erred in refusing to hold

(1) that transferee liability (being a proceeding in rem) can not be imposed upon anyone who did not actually receive the res that is being followed in the transferee proceeding and

(2) That Robert T. Jacob could not impose or create a personal liability against appellant by constituting himself a voluntary or gratuitous trustee or agent, as long as he retains the res, and he claims and holds the same adversely to appellant; that even if appellant had a right to recover the fund from Jacob, such right could not subject her to personal liability as transferee until she actually acquired possession of the res.

C. The Board erred in holding that the transaction which resulted in the receipt of the funds in question by Jacob constituted a liquidation of the Central Holding Co. (taxpayer), and a division of its assets; and it further erred in refusing to hold that Jacob received the fund from E. W. Barnes (not the corporation) in payment of the sale of the capital stock by Jacob to E. W. Barnes.

D. The Board erred in holding that the Central Holding Co. (taxpayer) became insolvent by reason of the receipt of the fund in [93] question by Robert T. Jacob and in refusing to hold that the taxpayer had sufficient property at said time and

subsequent thereto with which to liquidate all its tax liability.

E. The Board erred in refusing to hold that appellee failed to exhaust his remedies against the taxpayer prior to the proceeding against appellants as alleged transferee and that if the remedies against the taxpayer had been pursued the tax liabilities in question could have and would have been satisfied by taxpayer.

F. The Board erred in failing to find that appellee did not exhaust his remedies against the taxpayer corporation, and without a finding of fact in favor of the appellee in this respect the decision of the Board can not be sustained.

G. The Board erred in holding appellee was not estopped from proceeding against appellants as alleged transferees by the following former determinations:

(1) The determination of the Commissioner that appellants were not transferees and the refund of the income tax paid by appellants based upon such determination and

(2) The decision rendered by the Board of Tax Appeals in the proceeding in which Robert T. Jacob was charged with and held to be the transferee of the funds in question being proceeding in the Board of Tax Appeals Docket No. 99161.

H. The Board erred in admitting in evidence respondent's Exhibit K over appellants' objection.

I. The Board erred in admitting over appellants' objection incompetent evidence as to the al-

leged efforts of the respondent to exhaust the remedies against the transferor. [94]

J. The Board erred in admitting oral testimony and exhibits pertaining to the income tax return of the Central Holding Co. for the year ended June 30, 1937, and in refusing to strike the same on appellants' motion.

K. The Board erred in failing to give effect to the rule that the burden of proof was upon the commissioner to establish every element essential to a transferee liability.

(s) S. J. BISCHOFF,
Public Service Building,
Portland, Oregon
Attorney for Appellants

Service of a true and correct copy of the foregoing statement of points on which appellants intend to rely on appeal is hereby admitted this 30th day of January, 1943.

(s) J. P. WENCHEL
Attorney for Appellee

[Endorsed]: T. C. U. S. Filed Feb. 2, 1943. [95]

[Title of Court and Causes] [96]

To the Clerk of the above entitled Court.

The following is petitioners' statement of the evidence in the above entitled proceedings for certification and transmission to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated December 22, 1942.

S. J. BISCHOFF

Public Service Building
Portland, Oregon
Attorney for Petitioners

Due and timely service of the foregoing statement of the evidence is hereby admitted and accepted this 30th day of January, 1943.

J. P. WENCHEL

Attorney for Respondent

[97]

STATEMENT OF EVIDENCE PROPOSED
BY PETITIONERS ON REVIEW

The following is a statement of the evidence in the above entitled proceedings, reduced to narrative so far as is material to the assignments of error contained in the Petition for Review. These cases which were consolidated for hearing, came on for hearing before Bolon B. Turner, Member of the United States Court of Tax Appeals, at Portland, Oregon, on December 18, 1941; S. J. Bischoff, Esquire, appeared for the Petitioners (Petitioners on review), and John Pigg, Esquire, appeared for Commissioner of Internal Revenue (Respondent on review).

BEVERLY JEAN JACOB

called by Respondent, testified:

Direct Examination

I am the daughter of Robert T. Jacob. I signed 1937 income tax return prepared by my father. There is notation of 25 shares Central Holding Co. stock on it.

1937 Income Tax Return admitted without objection, Respondent's Exhibit A.

RESPONDENT'S EXHIBIT A

This Exhibit is the Income Tax Return of Beverly Jean Jacob, one of the Petitioners, for the calendar year 1937. It reports as revenue during that year \$4,948.04 as gain from the sale of twenty-five shares of the stock of Central Holding Co., at a cost of \$157.48, and gross sale price of \$5,105.52.

I signed "Gift Tax" return at request of my father. I do not recall what he said at the time. It contained information of 25 shares Central stock.

[98]

Gift Tax Return admitted without objection as Respondent's Exhibit B.

RESPONDENT'S EXHIBIT B

This Exhibit is the Gift Tax Information Return filed by Beverly Jean Jacob, one of the Petitioners herein, for the calendar year 1937, in which she reports the receipt of the gift of twenty-five shares

(Testimony of Beverly Jean Jacob.)

of the capital stock of the Central Holding Co. Approximate value of gift: \$5,105.52.

Testimony as Petitioners' witness:

I am 18 years old. I never received any stock of Central Holding Co. I never received any money from Central Holding Co., Barnes or Conley.

Thereupon, the following ensued:

Q. Did you ever receive any money from your father, that is, outside of a few cents spending money—something in the neighborhood of \$5,000? Did you receive such a sum from your father?

A. No, I did not.

Q. Did he ever give you any money purported to be money coming from Central Holding Co.?

A. No, none at all.

My signature is on the back of the stock certificate. I don't remember when I first saw it. I signed it at Seaside. I couldn't say if I ever saw or had it before I signed it.

Cross Examination

Stock Certificate, marked and received in evidence as Respondent's Exhibit C. without objection.

RESPONDENT'S EXHIBIT C

This Exhibit is stock certificate No. 8 for twenty-five shares of the capital stock of the Central Holding Co., issued in the name of Beverly J. Jacob,

(Testimony of Beverly Jean Jacob.)

dated June 23, 1936, signed E. W. Barnes, President, Robert T. Jacob, Secretary, and [99] endorsed in blank by Beverly J. Jacob. Endorsement dated August 10, 1937, witnessed by Agnes C. Jacob.

I do not know why I executed the Income Tax Return.

SHIRLEY MAY JACOB

called by Respondent, testified:

Direct Examination

I am the daughter of Robert T. Jacob. Don't remember hearing of Central Holding Co. before today. I signed the 1937 Income Tax Return. It contains statement of 25 shares Central stock. The Return was mailed by my father to me at Dallas, Texas, where it was executed March 7, 1938. Don't recall having noticed it referred to Central.

Return 1937 received, Respondent's Exhibit D, without objection.

RESPONDENT'S EXHIBIT D

This Exhibit is the Income Tax Return of Shirley May Jacob, one of the Petitioners, for the calendar year 1937. It reports as revenue during that year \$4,948.04 as gain from the sale of twenty-five shares of the stock of Central Holding Co., at a cost of \$157.48 and gross sale price of \$5,105.52

I couldn't state why Return was signed. I signed Gift Tax Return, dated March 20, 1938. I knew

(Testimony of Shirley May Jacob.)

I was supposed to be given some stock. I don't remember the circumstances.

Received as Respondent's Exhibit E, without objection.

RESPONDENT'S EXHIBIT E

This Exhibit is the Gift Tax Information Return filed by Shirley May Jacob, one of the Petitioners herein, for the calendar year 1937, in which she reports the receipt of the gift of twenty-five shares of the capital stock of the Central Holding Co. Approximate value of Gift: \$5,105.52.

I signed stock certificate No. 7, for 25 shares Central stock on reverse side, [100] August 10, 1937, at Seaside, Oregon.

Received as Respondent's Exhibit F, without objection.

RESPONDENT'S EXHIBIT F

This Exhibit is stock certificate No. 7, for twenty-five shares of the capital stock of the Central Holding Co., issued in the name of Shirley M. Jacob, dated June 23, 1936, signed E. W. Barnes, President, Robert T. Jacob, Secretary, and endorsed in blank by Shirley M. Jacob; endorsement dated August 10, 1937, witnessed by Agnes C. Jacob.

(Testimony of Shirley May Jacob.)

Cross Examination

I heard of the Welcome Hotel. I don't recall it was owned by Central. I never had stock certificate at any time before I signed it. I did not retain it. I never received \$5,105.52 from the Central Holding Co., Conley, Barnes or from my father. I never received any sum of money from any of them other than my school money, my allowance for spending money, once a month. Never received any money which purported to come from Central Holding Co.

Redirect Examination

Questioned by Mr. Pigg, she testified:

Q. Isn't it a fact that Mr. Jacob, your father, supplied you with a considerable amount of money at or about that time as a fund for paying your college expenses?

A. No, I did not receive such a fund.

Q. Now you have testified, I believe, that you never received any money from Central Holding Co., the Welcome Inn or Hotel, Mr. Barnes, Mr. Conley or Mr. Jacob?

A. No, I did not.

Recross Examination

I do not recall the circumstances under which I signed the Returns. I recall [101] my father telling me something about some stock. I am 23 years old.

GWENDOLYN E. JACOB

called by Respondents, testified:

Direct Examination

I am the daughter of Robert T. Jacob. I am more than 21 years old. The Income Tax Return for 1937 was executed by me March 7, 1938. It contains information of 25 shares Central stock. The Return was sent to me at Dallas, Texas, to be signed and returned. I recall a statement made that my father was going to give us some stock, but I didn't receive it. I didn't know the name of it.

Received as Respondent's Exhibit G, without objection.

RESPONDENT'S EXHIBIT G

This Exhibit is the Income Tax Return of Gwendolyn E. Jacob, one of the Petitioners, for the calendar year 1937. It reports as revenue during that year \$4,948.04 as gain from the sale of twenty-five shares of the stock of Central Holding Co., at a cost of \$157.48 and gross sale price of \$5,105.52.

My signature is on the "Gift Tax" return, but I don't recall signing it. I don't recall where I was, or who was present when I signed it. I imagine I signed it at my father's request.

Thereupon, the following occurred:

Q. At about that time or at a previous time, had your father, Mr. Jacob, said anything to you about

(Testimony of Gwendolyn E. Jacob.)

making a gift of stock of the Central Holding Co., or any other corporation, to you?

A. He mentioned a gift of stock, but that was something that didn't go into effect, because we didn't receive it.

Q. You mean at that time?

A. Or at any time. [102]

Received as Respondent's Exhibit H, without objection.

RESPONDENT'S EXHIBIT H

This Exhibit is the Gift Tax Information Return filed by Gwendolyn E. Jacob, one of the Petitioners, for the calendar year 1937, in which she reports the receipt of the gift of twenty-five shares of the capital stock of the Central Holding Co. Approximate value of gift: \$5,105.52.

My signature is on certificate for 25 shares Central stock. I still say I never had any stock in that company. Certificates were sent to us to be signed, and they were given to my mother to return to my father. I was not told why I was signing it. I didn't associate it with the prior statement of my father, that he intended to give me some stock. It was signed August 10, 1937.

Received as Respondent's Exhibit I, without objection.

(Testimony of Gwendolyn E. Jacob.)

RESPONDENT'S EXHIBIT I

This Exhibit is stock certificate No. 6 for twenty-five shares of the capital stock of the Central Holding Co., issued in the name of Gwendolyn E. Jacob, one of the Petitioners, dated June 23, 1936, signed E. W. Barnes, President, Robert T. Jacob, Secretary, and endorsed in blank by Gwendolyn E. Jacob. Endorsement dated August 10, 1937, witnessed by Agnes C. Jacob.

Cross Examination

I did not know of Central Holding Co. I knew of Welcome Hotel. I did not receive \$5,100-odd or any sum, from the Central Holding Co., James Conley, Edward Barnes or my father. I never received any sum of money which purported to come from Central; never received or had in my possession the stock certificate before I signed it.

Redirect Examination

My father did not make a substantial gift, or make available a substantial sum of money for college and educational purposes, in 1937. [103]

R. P. KUENEKE

called by Respondent, testified:

Direct Examination

I am chief in Income Tax Division of J. W. Maloney's office. I am familiar with rolls and records concerning assessment of income taxes. Assessment

(Testimony of R. P. Kueneke.)

List shows assessment of income taxes \$3,163.80, interest \$13.00, and excess profits tax \$2,844.02, interest \$11.69, for year ended 6/30/38, against Central. It was signed by Guy T. Helvering, October 13, 1938. Amounts have not been paid. First notice and demand was issued October 6, 1938; second, October 18; Warrant of Distrainment issued November 9. The Warrant is unsatisfied and not paid.

Cross Examination

The deficiency for the year ending 6/30/38, assessed against Central and Mr. Jacob, as transferee, was \$3,207.22. These assessments against Mr. Jacob were certified to our office as paid for the year 1937 and 1938. Our records wouldn't indicate who paid them; it shows they were paid by or for Jacob.

Assessment certificate admitted as Respondent's Exhibit J, without objection.

JAMES L. CONLEY

called by Respondent, testified:

Direct Examination

I was stockholder and vice-president of Central from organization, June, 1936, to August 18, 1937; E. W. Barnes was president. I ceased to be a stockholder August 18. Robert T. Jacob was secretary-treasurer. Barnes was to manage the hotel, Jacob to keep the books and make the Income Tax Returns, etc., and I to handle the legal affairs. As to tax

(Testimony of James L. Conley.)

matter of Central or its stockholders, we relied on Jacob. Central was organized to acquire the Welcome Hotel, Burns, Oregon. It purchased the property for \$40,000, including \$22,000 taxes. Jacob arranged with Farrell to loan [104] the corporation \$15,000.00. The corporation was in business July 1, 1936 until the fire, July 15, 1937. The main building with all its contents was completely destroyed; the boiler room and an apartment over it outside of the main wall was not destroyed. The insurance adjustment was for a complete loss. After the fire, a considerable portion of the walls remained standing. The walls for the north half of the building were in bad shape, and later fell. The south end was in better condition, and could have been used for rebuilding. The land was taken back by the county under a foreclosure of tax liens. At the time of the fire, there were about \$16,000 taxes unpaid. The value of that land that was left after the fire was considerably less than the taxes against it. I doubt if the ground and the remaining portion of the building was worth more than \$10,000 at the outside. The hotel building, furniture and fixtures covered by \$72,000 insurance was paid in full. We had left out of that insurance and other money about \$61,000 after paying all bills, which was divided three ways, \$20,422.10 to each of the three stockholders. I got \$20,422.10, Barnes got a like sum, or at least it was left in the company, and Jacob got \$20,422.10. There were two distributions; there was the \$18,000 distributed in advance of the receipt of the Lloyd

(Testimony of James L. Conley.)

money. We paid out \$10,733.68 out of the \$18,000, and that left on hand \$7,266.32, which was divided three ways, \$2,422.10 to Barnes, and the same amount to me and to the Jacob interests. That distribution was made a few days before the last distribution on August 17th. I have receipts as to the first distribution (\$18,000) but not as to the second distribution.

Thereupon, the following occurred:

Mr. Pigg: I will ask that these be received in evidence as Respondent's Exhibit K.

Mr. Bischoff: The Petitioners object to the document signed by R. T. Jacob, which purports to be for the Petitioners, on the ground that it is not binding on the Petitioners, and there is no evidence of authority to execute a receipt or receive money on their behalf, or that it was done pursuant to authority. [105]

The Member: The objection is overruled. It will be marked in evidence as Respondent's Exhibit K.

Admitted over objection, Respondent's Exhibit K.

Mr. Bischoff: Exception.

The Member: An exception is noted.

RESPONDENT'S EXHIBIT K

August 12, 1937

Received of Central Holding Co. the sum of
Twenty-four hundred twenty-two and 10/100

(Testimony of James L. Conley.)

(\$2422.10) Dollars, being one-third net proceeds of insurance on hand this date. Application of such distribution to be later determined.

JAS. L. CONLEY

August 12, 1937

Received of Central Holding Co. the sum of Twenty-four hundred twenty-two and 10/100 (\$2422.10) Dollars, being one-third net proceeds of insurance on hand this date. Application of such distribution to be later determined.

E. W. BARNES

August 12, 1937

Received of Central Holding Co. the sum of Twenty-four hundred twenty-two and 10/100 (\$2422.10) Dollars, being one-third net proceeds of insurance on hand this date. Application of such distribution to be later determined.

R. T. JACOB

for

AGNES C. JACOB

GWEN JACOB

SHIRLEY JACOB

BEVERLY JACOB

Account sheet received as Respondent's Exhibit L, without objection. [106]

(Testimony of James L. Conley.)

RESPONDENT'S EXHIBIT L

Welcome Hotel	Bk loan	10,000.00	Ed. pd. for me...\$	1,384.08
Central Holding Co.	Bk loan Int.	23.33	Ed. gave me.....	204.57
		<hr/>		
Paid a/c purchase price...\$	Bal. 1st Nat'l	10,023.33		1,588.65
Paid toward taxes	Jones	57.60		3,000
Dec. 1936—	Epperson-Lua Farm	250.00		
Paid Rand	Caldwell—United F.F.	184.00		4,588.65
		218.75		
		<hr/>		
		2,416.66		2,422.10
				2
		<hr/>		
		10,733.68		<hr/>
				4,844.20
				4,588.65
				<hr/>
				255.55
				<hr/>
				2,422.10
				<hr/>
				1,588.65
				<hr/>
				833.45
				<hr/>
				3,000.
				<hr/>
				2,422.10
				<hr/>
				577.90
				<hr/>
				255.55
				<hr/>
				833.45

[107]

(Testimony of James L. Conley.)

After that \$2400 distribution, there was an additional distribution of \$18,000 to each account. The corporation had no other assets, except this piece of land and there was some small amount retained for the purpose of paying some bills. I am not sure but that's my memory of it. There were no corporation minutes authorizing the distribution of the cash or other assets. Exhibit M is a photostatic copy of a notation I made at the time the stock certificates were delivered to Barnes. The second division of \$18,000 each was made on August 17th, 1937.

The corporation had authorized 300 shares of no par common stock. There was a rearrangement of the entire stock holdings. There were six certificates, one to Jacob for 100 shares; one to Barnes for 1 share; another to Barnes for $26\frac{1}{2}$ shares; another to Barnes for $72\frac{1}{2}$ shares; one to me for $26\frac{1}{2}$ shares; and one to me for $73\frac{1}{2}$ shares. It was a condition of the loan that control of the corporation be vested in Jacob until after the loan was paid. Barnes and I each turned over to Jacob $26\frac{1}{2}$ shares which, with his 100 shares gave him a total of 153 shares. The two certificates for $26\frac{1}{2}$ shares each were to be returned after Farrell was paid. Those 53 shares were returned to me and Barnes by Jacob after the loan was paid, when the \$2,422.10 distribution took place, a few days before the 17th of August, 1937.

Respondent's Exhibit M received without objection.

(Testimony of James L. Conley.)

RESPONDENT'S EXHIBIT M

R.T.J.	1	1
E.W.B.	2	1
E.W.B.	3	26½
O.G.B	4	72½
A.C.J.	5	24
G.E.J	6	25
S.M.J.	7	25
B.J.J.	8	25
J.L.C	9	50
J.E.C	10	50
		—
		300

Stock in Central Holding Co.

[108]

At the time I made these notes (Exhibit M) there was almost a complete rearrangement. Only No. 1 certificate was left outstanding of the old certificates. It is my recollection that at that time all of them were rewritten except No. 1. Exhibit N is the old original No. 1 certificate for 100 shares.

Respondent's Exhibit N received without objection.

RESPONDENT'S EXHIBIT N

This Exhibit is certificate of stock number 1, for one share of the capital stock of Central Holding Co., issued in the name of Robert T. Jacob, dated June 23, 1936, signed E. W. Barnes, president, Robert T. Jacob, secretary. Endorsement on the back not signed but dated August 10, 1937.

(Testimony of James L. Conley.)

I was present when Jacob surrendered his stock certificates.

Long after the surrender of Jacob's certificates, I heard it referred to as a sale; but I never heard it referred to as a sale prior to August 18, 1937.

Barnes and I met Jacob, August 17, 1937, before the distribution of the money at the bank. Jacob left the bank before Barnes and I did and it was later in the day when we saw Jacob. I know the next day, when the money was paid over, Jacob came into my office with the certificates. I did not prepare the stock certificates here. I gave Jacob the stock certificate book some few days before August 17. I have never seen the stock book, or whatever it was, since I returned it to Jacob. I never had any of the stock certificates, except my own, and that was delivered to Barnes on the 18th of August. There was nothing said about what I would do with my stock; everybody knew I was giving it to Barnes. That was the end, so far as I was concerned, when I was paid the \$20,422.10 I gave Barnes my stock. He paid me no consideration for the stock.

All I know about the Barnes and Jacob deal is that Jacob told me if he took his money out, he would give Barnes his stock. I saw him give his stock to Barnes. But if they had any other consideration, I don't know. I heard Jacob say Barnes ought to pay his overdrafts. He had drawn a little in advance of salary or expenses. [109] Jacob stated he ought to straighten that up; but so far as the

(Testimony of James L. Conley.)

sale of the stock was concerned, I never heard anything of that nature at all.

Thereupon, Mr. Conley testified as follows:

Q. By Mr. Pigg: Did you have any understanding, Mr. Conley, as to the purpose for which the stock certificates were to be given to Mr. Barnes after this distribution?

A. Well, it was to vest the ownership of the stock in Mr. Barnes so that he could go ahead and build, or do whatever he wanted to with the company.

Q. Had Mr. Barnes expressed a desire or purpose to do so, that you know of, a number of times?

A. Yes, Mr. Barnes mentioned it to me as early as Saturday; that is, the second day after the fire. He wanted to know, in the first place, what Mr. Jacob and I thought about it, and whether Mr. Jacob and I would join him in rebuilding; and I told him that I understood that Mr. Jacob wanted to take his money and get out; and, so far as I was concerned, I would join in the rebuilding if we could do it with the money that we had and not leave too much indebtedness. In other words, I didn't want to go very heavily in debt. And then, after discussing the matter a few minutes, Mr. Barnes said, "If you and Mr. Jacob step out, will you give me your stock?" I said, "I can speak only for myself, and if I step out, I will give you my stock, and I will ask Mr. Jacob when I get back to Portland."

I asked Jacob whether he would be willing to give

(Testimony of James L. Conley.)

Barnes his stock, and he told me he would. Barnes was indifferent towards continuation of the corporation; and looked upon it more or less as a nuisance.

Respondent's Exhibit O received without objection.

RESPONDENT'S EXHIBIT O

This Exhibit consists of five certificates of stock as follows: [110]

1. Certificate #3 for 26½ shares of capital stock of Central Holding Company issued in the name of E. W. Barnes, dated June 23, 1936, signed E. W. Barnes, president, Robert T. Jacob, secretary.

2. Certificate #4 for 72½ shares of capital stock of Central Holding Company issued in the name of Olive G. Barnes, dated June 23, 1936, signed E. W. Barnes, president, Robert T. Jacob, secretary.

3. Certificate #5 for 24 shares of capital stock of Central Holding Company issued in the name of Agnes C. Jacob, dated June 23, 1936, signed E. W. Barnes, president, Robert T. Jacob, secretary. Endorsed in blank by Agnes C. Jacob, witnessed by Gwendolyn E. Jacob. August 10, 1937.

4. Certificate #9 for 50 shares of capital stock of Central Holding Company issued in the name of James L. Conley, dated June 23, 1936, signed E. W. Barnes, president, Robert T. Jacob, secretary.

5. Certificate #10 for 50 shares of capital stock of Central Holding Company issued in the name of

(Testimony of James L. Conley.)

James L. Conley, dated June 23, 1936, signed E. W. Barnes, president, Robert T. Jacob, secretary.

Cross Examination

When the \$6,000 or \$7,000 was distributed, no stock was handed back. We didn't regard the stock as involved; we had the money on hand, and distributed it. The final distribution was made August 17, and both Jacob and I delivered our stock to Barnes the next day. Before any distribution of any kind was made, there was an understanding that I was to surrender my stock to Barnes, and Jacob was to surrender his stock to Barnes, and we both surrendered it, pursuant to that understanding. When the stock was delivered, the corporation was not dissolved, the corporation continued and in December, 1937, purchased another hotel at Arlington, Oregon, which was named the Welcome Hotel. The big neon sign, Welcome Hotel was transferred from Burns and put on the hotel at Arlington.

About the time the first \$18,000 was received from insurance, \$5,000 was forwarded to the Harney County Bank in Burns, and an account opened in the name of the Central. Part of that \$5,000 was used to purchase land and an uncompleted structure known as Hines Hotel. The property was first taken in the name of Barnes and his wife, and then transferred to Central and by Central to Amato, as a part of purchase price of the hotel at Arlington. [111]

The property at Arlington was conveyed to the Central Holding Co. by the Amato brothers and

(Testimony of James L. Conley.)

father. Purchase price of that property was \$50,000; \$6,313.08 cash; \$15,000 by conveyance of the Hines Hotel property; \$5,000 by assuming taxes; and a \$23,868 mortgage. The agreement of purchase was originally between Barnes and Frank Amato, the father, but it was understood it was to be purchased by Central; but it was more convenient in this preliminary agreement to have it between Barnes and Amato, and that is the way that it was done. Title to the property was conveyed to Central pursuant to arrangement, December 15, 1937. The corporation retained title until September, 1938. I did not know at any time anything regarding Jacob's intention to make a gift of his stock to his family. The first I head of it was August.

Four deeds received without objection as Petitioners' Exhibit 1.

PETITIONERS' EXHIBIT 1

This Exhibit consists of four deeds as follows:

1. Deed made by Pondosa Investment Company, grantor, to E. W. Barnes, grantee, dated July 24, 1937, conveying Lots 2 to 7, both inclusive, Block 98, Tract 5, Stafford Derbes & Roy subdivision, Harney County, Oregon. Consideration \$10.00.
2. Deed made by Harney County, Oregon, grantor, to E. W. Barnes, grantee, dated August 4, 1937, conveying Lots 2, 3, 4, 5, 6 and 7, in Block

(Testimony of James L. Conley.)

98, Tract 5, of Stafford, Derbes & Roy subdivision to the City of Hines, Oregon, Harney County, Oregon. Consideration \$2,809.27.

3. Deed by E. W. Barnes, grantor, to Olive G. Barnes, his wife, grantee, dated August 4, 1937, conveying real property. Lots 2, 3, 4, 5, 6 and 7 in Block 98, in Tract 5 of Stafford, Derbes & Roy subdivision to City of Hines, Harney County, Oregon. Consideration \$10.00.

4. Deed by Olive G. Barnes and E. W. Barnes, wife and husband, grantors, to Central Holding Company, grantee, conveying Lots 1 to 53, both inclusive, in Block [112] 98, Tract 5, Stafford, Derbes & Roy subdivision, Harney County, Oregon. Consideration \$10.00.

Two deeds received without objection as Petitioners' Exhibit 2.

PETITIONERS' EXHIBIT No. 2

This Exhibit consists of two deeds:

1. Deed from Frank Amato and Maria Amato, husband and wife, grantors, to Central Holding Company, grantee, dated December 15, 1937, conveying the real property which was known as the Arlington Hotel, the name of which was changed to the Welcome Hotel. The expressed consideration is \$10.00.

2. Deed by Joe Amato and Rose Amato, husband and wife, grantors, to Central Holding Com-

(Testimony of James L. Conley.)

pany, grantee, dated December 15, 1937, conveying the real property which was known as the Arlington Hotel, the name of which was changed to the Welcome Hotel. The expressed consideration is \$10.00.

Deed received without objection as Petitioners' Exhibit 3.

PETITIONERS' EXHIBIT No. 3

Deed. Central Holding Company, grantor, to Frank Amato, grantee, dated Deember 11, 1937, conveying real property. Lots 1 to 17, both inclusive, and Lots 22 to 43, both inclusive, in Block 98, Tract 5, Stafford, Derbes & Roy subdivision, Harney County, Oregon. Expressed consideration \$10.00.

Redirect Examination

The \$5,000 sent to Burns from Portland, represented funds of the Central Holding Co. from the United Fireman's policy.

It was agreed at the time the \$5,000 was sent to Burns that the corporation was going to be liquidated out of that \$5,000.

The Hines property was turned in on a deal, by which Mr. Barnes acquired the Arlington Hotel. Barnes used a portion of the \$5,000 to acquire the Hines property [113] and, in turn, the Arlington Hotel property, and then, in turn, charged himself with it. The Hines property was traded in on the Arlington property.

(Testimony of James L. Conley.)

Petitioners' Exhibit 1 covers a portion of the Hines property; the portion on which the unfinished hotel was located. There was also included in the Hines transaction some 40 or 50 other lots, but this Petitioners' Exhibit No. 1 covers Lots 2 to 7, inclusive, Block 98, Tract 5, which is the portion of the Hines property on which the unfinished hotel was located.

The portion of the Hines land with the hotel building is the part that went to Amato in the trade. The transfer of the title to the Arlington Hotel property to the Central was done on advice of Jacob, the 17th of August, 1937. At that time he told Barnes and me there would be no taxes because of any distribution of funds of Central Holding Co. if it remained in existence and either purchased another hotel or rebuilt the old hotel; and it was pursuant to that advice that the company was kept in existence, as I understand it. I requested Jacob to cover the matter in a letter, and there seemed to be some dispute about the letter. Jacob later gave me a copy of a letter that he was supposed to have written to Barnes. Barnes said that he never received it. December, 1937 or January, 1938, I asked Jacob if he had written Barnes. He said he had. I asked for a copy, and that afternoon he sent up a copy of a letter he claims he wrote Barnes. The letter referred to the statute covering enforced liquidation. I read the section and it seemed to be materially different from what Jacob had said; I went back and told Jacob what

(Testimony of James I. Conley.)

the statute said. He still insisted he was right, and made an explanation that seemed reasonable.

Jacob prepared the return for the fiscal year June 30, 1937 and Barnes signed it. [114]

Recross Examination

Letter, 8/18/37, received as Petitioners' Exhibit 4, without objection.

PETITIONERS' EXHIBIT No. 4

August 18, 1937

E. W. Barnes, President
Central Holding Company
Burns, Oregon

Dear Mr. Barnes:

At the request of Mr. Conley, I am confirming the information given you in person respecting the tax liability of the Central Holding Company on account of the profits resulting from the burning of the Welcome Hotel, at Burns.

As stated to you, the Internal Revenue Act of 1936, Section 112, provides:

“Involuntary conversions.—If property (as a result of its destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation, or the threat or imminence thereof) is compulsorily or involuntarily converted into property similar or related in service or use to the property so converted, or into money which is forthwith in good faith, under regulations prescribed by the Commissioner with the approval of the Secre-

(Testimony of James L. Conley.)

tary, expended in the acquisition of other property similar or related in service or use to the property so converted, or in the acquisition of control of a corporation owning such other property, or in the establishment of a replacement fund, no gain or loss shall be recognized. If any part of the money is not so expended, the gain, if any, shall be recognized, but in an amount not in excess of the money which is not so expended.”

You will observe that the condition imposed is that the money received be expended in the acquisition of other property, similar or related in service or use to the property converted or destroyed. You have advised that you will purchase the hotel property at Hines, Oregon, which you propose to complete and use to carry on the hotel business formerly conducted at Burns, Oregon. It is my understanding that you will use the same name of the hotel at Burns, to-wit: “The Welcome Hotel”. Although the regulation provides that it is not necessary to earmark the moneys received and to be received, when your new books are opened a “replacement fund” account should be set up and all of the moneys which you receive that are to be applied in the purchase of property, furniture, equipment, etc., [115] should be credited to this replacement fund, and the expenditures charged against it as they are made.

As I have already advised you, it is absolutely necessary that you keep the Central Holding Com-

(Testimony of James L. Conley.)

pany alive for the purpose of replacing the property burned and all properties acquired must be acquired in the name of the Central Holding Company. After this has been done, if it is your desire to liquidate the corporation, then upon such liquidation, you and such other stockholders as you may have in the Company at the time of liquidation would be subject to the personal income tax upon the basis of any gain which might be realized, measured by the difference between the cost of your stock and the fair market value of the Corporation's property at the time of liquidation. If there is a good prospect that the Corporation will make considerable profits from year to year from operations, it would be well from your standpoint to liquidate the Corporation soon after your new hotel has been completed. This would be beneficial in two respects: First, you would save the excessive corporation taxes, and secondly: the individual profit, if any, would doubtless be less, before than after several years of successful operation. I believe the above covers the case sufficiently, but if there is any further information you desire, I shall be very glad to supply it.

Very truly yours,

ROBT. T. JACOB

RTJ:RN

Copy to James L. Conley

1312 Public Service Bldg.

Portland, Oregon

January 3, 1938

(Testimony of James L. Conley.)

(Mr. Conley continuing): I believe the advice given by Jacob was given in good faith. I didn't question it at all. I was sure of it; I trusted Jacob entirely, and I knew he was a competent income tax man.

ROBERT ELLISON

called by Respondent, testified:

Direct Examination

I have been Special Zone Deputy in the office of J. W. Maloney, for about 8 years. I had something to do with efforts to collect tax assessed against Central. I received a warrant for distraint in March, 1938. [116]

Respondent's Exhibit P received in evidence without objection.

RESPONDENT'S EXHIBIT P

Respondent's Exhibit P is as follows: [117]

23C RCD 10/19/38

No. 8663

WARRANT FOR DISTRAINT

Balance Forward	Date	Charge	Last Credit
-----	-----	-----	-----
-----	-----	-----	-----
Unpaid Balance		Account Number and Remarks	
6032.51		Sept—40024—1938—EP.	
		FY 6/30/38 IT due with int	
		a/c delinquency.	

(Testimony of Robert Ellison.)

Central Holding Company, Inc.

1226 American Bank Bldg.,

Portland, Oregon.

Date of First Notice:

10/5/38

Date of Second Notice:

10/18/38

To Robert Ellison, Deputy Collector.

Whereas, in pursuance of the provisions of the Acts of Congress relating to internal revenue the above-named person or persons is or are liable to pay the tax or taxes assessed against him, or them, in the amount or amounts named hereinbelow, together with penalties and interest prescribed by law for failure to pay said tax or taxes when the same became due; And Whereas, ten days have elapsed since notice was served and demand made upon said person or persons for payment of said tax or taxes; And Whereas, said person or persons still neglect or refuse to pay the same; You are hereby commanded to levy upon, by distraint, and to sell so much of the goods, chattels, effects, or other property or rights to property, including stocks, securities, and evidences of debt, of the person or persons liable as aforesaid, or on which a lien exists for the tax or taxes, as may be necessary to satisfy the tax or taxes, with such additional amounts, including interest, as are shown in the statement below, and also such further sum as shall be sufficient for the fees, costs, and expenses of the

(Testimony of Robert Ellison.)

levy; but if sufficient goods, chattels, or effects are not found, then you are hereby commanded to seize and sell in the manner prescribed by law so much of the real estate of said person or persons, or on which a lien exists for the tax or taxes, as may be necessary for the purposes aforesaid. You will do all things necessary to be done in the premises and strictly comply with all requirements of law, and for so doing this shall be your warrant, of which make due return to me at this office on or before the sixtieth day after the execution hereof.

Unpaid balance 3163.80 IT 13.00 Int 2844.02 EP 11.69 EP \$6032.51.

IT: 3176.80

EP: 2855.71

Penalty of 5 per centum

Delinquency interest computed from 10/10/38 to 11/9/38 29.75-x

IT: 15.67

EP: 14.08

Total tax, penalty and interest due on date of second notice \$6062.26.

Amount of additional interest due from date of second notice

Witness my hand and official seal at Portland, Oregon, this 9th day of November, 1938.

J. W. MALONEY

Collector of Internal Revenue

Internal Revenue Collection District of Oregon.

lien #5154 filed 3/7/39 Clk., U. S. Dist. Court,

(Testimony of Robert Ellison.)

Portland, Ore. & County Clerks, Multnomah Co. (Portland); Harney Co. (Burns) & Gilliam Co. (Condon, Ore.). [118]

RETURN OF DEPUTY COLLECTOR

*I hereby certify that, pursuant to the herein warrant of distraint, I proceeded to levy upon and sell the property herein described in order to satisfy the taxes, penalties, and interest herein stated and required by law, and that all the provisions of law were strictly complied with; that the property was sold at public auction, after due notice, to the highest bidder at the prices herein stated:

1. Date of receipt of warrant
2. Date of notice of sale
3. Description of property levied upon

4. Notice of sale:

By publication in newspaper at

By posting notice at following places

5. Name of purchaser

6. Amount received from sale\$.....

7. Cost of levy and sale\$.....

8. Net proceeds\$.....

The gross proceeds, amounting to \$....., are herewith inclosed.

*I have not executed the within warrant for the following reasons:

.....

(Testimony of Robert Ellison.)

Dated at _____, 193.....

Deputy Collector.

*Strike out lines inapplicable.

INSTRUCTIONS

1. The collector will maintain a file consisting of copies of all warrants of distraint issued. Each warrant should be numbered and the number and name of the deputy to whom issued entered on Form 824. This will enable the collector to readily trace every warrant issued and insure its prompt return. Upon the return of the warrant by the deputy the entries on Form 824 should be completed, so that it will give a complete history of all proceedings on said warrant, and in case of the sale of real estate, proper entries should also be made in Record 21. Upon the execution of the warrant it should be promptly returned to the collector, with a report showing, in full, what action was taken in each case. A warrant can not be considered closed until all interest due is collected or an offer in compromise is tendered in lieu of such interest. A report on Form 210 should be made to the Commissioner of Internal Revenue in all cases where personal property is sold under a warrant for distraint.

2. Sixty days are deemed ample time for the execution and return of a warrant for distraint by a deputy collector. When report is delayed beyond

(Testimony of Robert Ellison.)

that time the delinquent deputy should be called on for an explanation of the cause of such delay, and if not satisfactory the collector will require the deputy to execute and return the warrant at once.

3. When a warrant for distraint is returned with the report of no property found liable to distraint, the deputy so reporting must accompany the return warrant with his affidavit on Form 53. This form should not be executed in any estate tax case until after the most searching inquiry has been made as to the property comprising the gross estate which is subject to distraint proceedings.

4. Attention of distraining officers is called to the following provisions of law: "Provided, That there shall be exempt from distraint and sale, if belonging to the head of a family, the schoolbooks and wearing apparel necessary for such family; also arms for personal use, one cow, two hogs, five sheep and the wool thereof, provided that the aggregate market value of said sheep shall not exceed fifty dollars; the necessary food for such cow, hogs, and sheep, for a period not exceeding 30 days; fuel to an amount not greater in value than twenty-five dollars; provisions to an amount not greater than fifty dollars; household furniture kept for use to an amount not greater than three hundred dollars; and the books, tools, or implements, of a trade or profession, to an amount not greater than one hundred dollars, shall also be exempt; and the officer making the distraint shall summon three disinterested householders of the vicinity, who shall ap-

(Testimony of Robert Ellison.)

praise and set apart to the owner the amount of property herein declared to be exempt.”

5. Care must be exercised in estate tax cases to ascertain that the property seized to enforce the collection of the outstanding assessment clearly is subject to distraint. [119]

I wrote a letter to our deputy.

Thereupon, the following ensued:

Mr. Bischoff: I object to that on the ground that the action taken on the warrant cannot be shown that way, and can only be shown by the return required by law to be made on the warrant.

The Member: The objection is overruled.

Mr. Pigg: Will you read the question, Mr. Reporter?

(Thereupon the last question was read aloud by the reporter as hereinabove recorded.)

Mr. Bischoff: Note an exception.

The Member: An exception is noted.

The Witness: I wrote a letter to our Deputy at Pendleton asking him to call upon the taxpayer.

Mr. Bischoff: I will object to that as incompetent. The writing is the best evidence.

The Member: Are you objecting?

Mr. Bischoff: Yes.

The Member: The objection is overruled. Go ahead and tell me what you did with it.

(Testimony of Robert Ellison.)

The Witness: And then I personally called upon a Mr. Phipps in the American Bank Building, who is said to be counsel for the taxpayer, and asked him what the prospect of collection of the account was.

Mr. Bischoff: I move to strike that as incompetent, and as not binding upon the Petitioners in this case.

The Member: The motion is denied.

Mr. Bischoff: Exception.

The Member: Exception noted. Go ahead. [120]

The Witness (Continuing): Then I next called on a deputy in the office by the name of McEntee——

Mr. Bischoff: I object to that.

The Member: Just a moment. If you want to make an objection, you may move to strike everything afterwards. I am asking this question.

The Witness (Continuing): * * * * * I asked him to call upon one of the officers of the corporation at Arlington, who, I believe, was in the Vendome Hotel there, and I asked him to make an appropriate investigation of the corporation's assets for the purpose of determining whether or not the tax could be collected; and the report of that deputy was in the negative, that the corporation was found to have an indebtedness in excess of the assets.

Mr. Bischoff: I move to strike.

The Member: Is that the answer to my question?

(Testimony of Robert Ellison.)

The Witness: Yes.

The Member: That concludes your statement?

The Witness: Yes.

Mr. Bischoff: I move to strike the answer as incompetent, irrelevant and immaterial, and as hearsay on the ground that the action taken upon the warrant of distraint can only be established by the returns which are required to be made, endorsed thereon, by law.

The Member: The motion to strike is denied.

Mr. Bischoff: Note an exception.

The Member: Exception noted.

Cross Examination

This warrant appears to have been issued on November 9, 1938. I got it March, 1939. The marks "5154 File 3-7-39" were placed on there the day it was presented to the court house for filing.

This warrant still remains unsatisfied. [121]

EDWARD W. BARNES

called by Respondent, testified:

Direct Examination

I was President and original stockholder of the Central Holding Co. There were 27½ shares to myself and 72½ shares to my wife. 26½ shares were assigned to Jacob in connection with a contract with Jacob, Conley, myself and Farrell.

Exhibit Q, copy of contract June 20, 1936, be-

(Testimony of Edward W. Barnes.)

tween Robert T. Jacob, James L. Conley and E. W. Barnes; marked and received in evidence as Respondent's Exhibit Q without objection.

RESPONDENT'S EXHIBIT Q

This Exhibit is an agreement dated June 30, 1936 by E. W. Barnes, R. T. Jacob and Jas. L. Conley, which so far as is here material, provides that Robert T. Jacob is to "hold and control 51%" interest in and to the hotel property and furnishings until a loan of \$15,000.00 made by Robert S. Farrell shall be paid in full. That a corporation is to be formed, and that 51% of the stock shall be issued to Robert T. Jacob and 49% to be divided equally between Barnes and Conley, and that after said loan is paid, Jacob shall immediately assign to Barnes and Conley sufficient of the stock to "equalize the interests of the parties hereto".

I signed the income tax returns of Central for fiscal years 1937 and 1938. The typewritten matter in the return of June 30, 1937, was prepared by Jacob and I never did see the inside of it until in 1938. When I signed the return, I asked him if he didn't have to sign it as secretary, and he said that he had resigned as secretary.

Return, 1937, marked for identification as Respondent's Exhibit R and offered in evidence.

Thereupon, the following occurred:

Mr. Bischoff: We object to this document as in-

(Testimony of Edward W. Barnes.)

competent, irrelevant and immaterial. It has to do with the year 1937, which is in no way involved in the contro- [122] versy now before the Board. We are concerned solely with the 1938 tax.

Mr. Pigg: Your Honor, I would like to be heard.

Mr. Bischoff: It has no bearing on the issue.

The Member: What is the purpose?

Mr. Pigg: It is twofold; and, especially, at this time, it is offered * * * one of the links in the chain of circumstances. This was a short-lived corporation, in business for two years, and the evidence here has covered the existing corporation from the time of its organization until the time of the destruction of the building by fire, and the Respondent thinks it is admissible on that ground. Secondly, the Respondent believes, to further connect this up, it will be quite material to the Government's contentions in this case.

Mr. Bischoff: I don't know of any issue present in the pleadings which would have anything to do with the year 1937.

* * * * *

The Member: The objection will be overruled. It will be marked in evidence and received as Respondent's Exhibit R.

Return, 1937, received as Respondent's Exhibit R.

Mr. Bischoff: Note an exception.

RESPONDENT'S EXHIBIT R

This Exhibit is the Income Tax Return of the

(Testimony of Edward W. Barnes.)

Central Holding Company for the fiscal year ending June 30, 1937.

Return of Central for year ended June 30, 1938, bears my signature.

Return, 1938, received as Respondent's Exhibit S, without objection.

RESPONDENT'S EXHIBIT S

This Exhibit is the Income Tax Return of the Central Holding Company for the fiscal year ended June, 1938. [123]

I am familiar with the circumstances surrounding the acquisition of the hotel property at Burns, Oregon, by Central, which was destroyed by fire, and the manner and method and arrangements under which a disposal of the insurance proceeds were made. There were two distributions of the insurance proceeds, one of \$2,400 and one of \$18,000 each in August, 1937.

I can't exactly tell you the figures I received at both times, \$20,422.10. \$5,000 was wired to me at Burns from the U. S. National Bank here. I used that \$5,000 to pay bills, a note of Conley's and I took \$2,800 and bought the Pondosa Hotel in Hines, Oregon, six lots which the unfinished hotel stood on.

(Testimony of Edward W. Barnes.)

Questioning continued as follows:

Mr. Pigg: Now Mr. Barnes, explain to the Board the circumstances and the agreements and understandings that you had with Mr. Jacob and Mr. Conley, or either or both of them, surrounding the distribution of the cash, of the insurance proceeds, between Mr. Jacob and Mr. Conley and yourself?

* * * * *

A. Well, in the first place, I wanted to rebuild the hotel, and I came down here, and they didn't, either one of them; they said they wanted to get out. Conley said that if it didn't cost too much money and we didn't go in debt too much, it might be all right, but Mr. Jacob said he wanted to get out. * * * * I asked them if they would give me their stock, and they said "yes". Conley told me one time before that he would, and Mr. Jacob said "yes". * * * *

Q. After the distribution between you gentlemen of those proceeds on August 17, 1937, did the Central Holding Co. own or possess any property or assets other than the cash that had been distributed after the fire?

A. No. Except for the land or lots on which the hotel had theretofore stood. The unpaid state, county and city taxes were paid down to \$16,000.

Assuming that the property had been free from any taxes and assessments—the fair value of the land and the walls or whatever stood after the fire was between \$4,000 [124] and \$5,000. After the

(Testimony of Edward W. Barnes.)

distribution of this cash, I was going to rebuild, and didn't because it cost too much money; and then we let it go back to the county.

Three months later, Central acquired the Arlington Hotel in the transaction on which the Hines property on which I used the \$2800 insurance proceeds, was traded in for \$15,000.00. It wasn't worth that. In buying the hotel at Arlington, I paid \$5,000 cash, and I used about \$4,000 repairing the hotel and fixing it over. The Hines property or the Arlington property have not stood in the name of the Central for two years.

I paid \$5,000 in cash to Amato, and spent about \$4,000 repairing the hotel, and had some other expenses out of the \$20,000 and \$400 that I got from the Central insurance. They got equal amounts,—Jacob and Conley. And Jacob told me, when I either bought or built, I could turn it back in my own name. But when I bought the property the 15th of December, I told Conley, my attorney, I wanted it released into my own name before the end of the year. That was about the middle of December, 1937, when I bought the hotel, in the name of the corporation. The money used to purchase it and the business was my own money. I decided to take title to that property in the name of Central because I was advised by Jacob if I bought or built and took it in the name of the Central Holding Co. there would be no tax. Jacob said that there would be a \$3,000 tax if we split up and not bought or built, and that it would save each one of us \$1,000

(Testimony of Edward W. Barnes.)

by doing that. I would rather have the company, anyway, because I might want to borrow some money and I could borrow quicker if I had a company. When I bought the hotel at Hines, it was my own money, because we had an agreement on the division of the money before I went back to Burns. I never purchased any shares from Jacob and he never sold me any. The arrangement with Jacob was, if I carried on the company, he would give me his stock and Conley would give me his; and the saving would be about \$3,000 in taxes, \$1,000 apiece; and I would rather have the company, anyway, figuring that if I needed any money to rebuild, I could borrow [125] a lot easier with the company. That was long before we had any distribution of any money. When I was down here, before the \$5,000 was sent to Burns, that was the understanding.

At the time Jacob turned over the stock certificates to me, I did not pay or promise to pay him anything for them.

Thereupon, the following ensued:

Mr. Pigg: Mr. Barnes, I hand you four documents. One is the original stock certificate marked Respondent's Exhibit N, and three photostatic copies of stock certificates, marked Exhibits C, F, and I, and one of the photostatic copies, which is No. 8, in favor of Beverly Jacob, the photostat, which is No. 7 stock certificate, Exhibit F, is in favor of Shirley May Jacob, and stock certificate which is

(Testimony of Edward W. Barnes.)

No. 6, Respondent's Exhibit I, in favor of Gwendolyn E. Jacob, and I will ask you when you first saw those certificates, if you know.

A. Well, it is my recollection that on the 18th day of August, 1937, Mr. Jacob came into Mr. Conley's office, and he had a bunch of certificates in his hand, and he said "Ed, I have turned this stock over to my family, and naturally, you will have to sign the certificates", and he handed them over. I was at one end of the place, sitting at one desk, and he came along here (indicating) and Mr. Conley was here (indicating), and he handed the certificates over to me, and I got a pen and started signing them. I suppose it was to his family. It was unnecessary for me to read them.

Q. Did you observe at that time, Mr. Barnes, that these certificates were dated June 23, 1936?

A. No, I didn't look at the date or anything. I didn't look at the names. He just handed me those certificates and I signed them.

Q. Relying on his request and advice?

A. Yes. He was there, and Mr. Conley was there, too, and I signed the certificates. At that time, Mr. Conley told him that he had to have two certificates made, [126] because he promised to give his wife all his stock, and he had them there, too, and I think that I signed them right there.

Q. Mr. Barnes, I will hand you Exhibit O, which consists of four stock certificates, or photostatic copies thereof. One of the four is shown on the face of the Exhibit as being for 24 shares of stock in

(Testimony of Edward W. Barnes.)

favor of Agnes C. Jacob. What were the circumstances under which you signed that certificate? Were they the same as you have related with respect to the next preceding three that you have just referred to?

A. My recollection is that I signed five or six stock certificates that day. I may have signed 7. I don't know.

Q. Prior to that time, to your knowledge, was there any stock certificates issued, of the Central Holding Co. standing in the name of any one of Mr. Jacob's family, other than himself?

A. Not that I know of. No, I know there wasn't.

Cross Examination

I don't remember when Central deeded the Welcome Hotel property, at Arlington, to me and Mrs. Barnes. It was about 2 years ago. I tried to get it turned in to my own name the first of the year, but couldn't. It was in the name of the corporation, a year and a half, or better. To my recollection these certificates were made out on August 18, and that I signed them on that day, the day after the money was divided up. The money was divided up at the First National Bank on the 17th of August. I am sure that it was the next afternoon. He handed me those certificates to sign on that day.

Thereupon, the following occurred:

(Mr. Bischoff, questioning). Well, when did you ultimately get the certificates from Mr. Jacob?

(Testimony of Edward W. Barnes.)

The Member: Which certificates are you talking about?

Mr. Bischoff: I am talking about the certificates of Mr. Jacob's family, the 5 [127] certificates made out in the name of the Jacob family.

A. May I go back a minute? This morning, I heard Mr. Conley testifying that there were certificates made out for me on the 18th of August, and one for my wife. There wasn't.

Q. I am talking about the five certificates which were turned over to you ultimately, there was one share in Mr. Jacob's name, one certificate in Mrs. Jacob's name for 24 shares, and then there were three certificates of 25 shares each for the girls. Weren't those turned over to you in Mr. Conley's office on the 18th of August, and didn't you keep them after that time?

A. They were either left in there,—maybe I took them, but I don't think so. I think that they were left in Mr. Conley's safe.

Q. Do you want the Board to understand that on August 18, the certificates were made out, that you signed them, and either took them yourself or gave them to Mr. Conley to put in his safe for you?

A. Either one. * * * I know I signed certificates on the 18th, on Mr. Conley's desk. * * * I signed certificates on the 18th, and I seen some certificates on Mr. Conley's desk; I don't know what certificates, or how many, but he said they were his family's certificates.

Q. But is it clear now that the family certificates

(Testimony of Edward W. Barnes.)

that you signed on that occasion remained with you or Mr. Conley for you, to be in his safekeeping?

A. It was either in the safe, or they were handed to me, as I recall it. It was either one.

I never returned them to Mr. Jacob for any purpose.

Q. Isn't it a fact that the certificates were already endorsed by the members of the family when they were turned over to you on the 18th?

A. I don't know; I never looked at the back of them.

Q. You had them in your possession all the time didn't you?

A. I never had them in my possession to look at, even. [128]

Q. When you got the certificate, didn't you see that they were endorsed?

A. I never looked at the endorsements, no, I took Mr. Jacob's and Mr. Conley's word for everything. I signed the front of them, I know that. In fact, I didn't figure that they amounted to anything anyway. I paid cash, \$5,000 in connection with the hotel deal in Arlington, out of the \$20,400. I paid \$5,000 in cash, and I spent about \$4,000 in fixing the hotel up.

Q. You had said on a number of occasions that that \$20,400 was your personal money?

A. Yes, sir.

Q. Didn't you set that money aside and treat it as the money of the Central Holding Co., the corporation?

(Testimony of Edward W. Barnes.)

A. I may have had it in a safety deposit box until I started to do things with it.

Q. Didn't you put it aside and treat it as money of the corporation?

A. No, not that I know of; I was using the corporation as a name, that is all.

My signature is on this letter dated January 24, 1938. That is a letter I wrote Jacob.

Letter, 1/24/38, marked and received in evidence as Petitioner's Exhibit 5, over Respondent's objection.

PETITIONER'S EXHIBIT No. 5

4006 N.E. Hoyt Street,
Portland, Oregon.
January 24, 1938.

Mr. Robt. T. Jacob,
Ninth Floor,
Public Service Building,
Portland, Oregon.

Dear Sir:

The date of the Hotel Welcome fire was the 15th day of July, 1937. Shortly after the fire, Mr. Conley [129] came to Burns. I told him I would like to rebuild the hotel. He told me that neither you nor he wanted to rebuild but made the suggestion that if he pulled out he would turn his stock over to me, gratis. He also said he figured you would do the same. I talked with him and reasoned with him to stay

(Testimony of Edward W. Barnes.)

in and rebuild the place but he couldn't see it that way. He said you, too, wanted to pull out. Shortly after that I came to Portland and talked with you and Mr. Conley. You said you wanted to pull out entirely and you both said you would turn your stock over to me gratis—and asked me to carry on the Central Holding Company. You, yourself, told both Conley and me that if the Company was not carried on and we divided up the money it would cost both you and Conley and myself a thousand dollars apiece for income tax. You said if I carried on the Company and built the hotel or bought a hotel, in case I did either one of these two things, I could then turn the Central Holding Company back to myself and there would be no income tax.

I relied upon you as an income tax man and followed through as per your instructions. On the 15th day of December I bought a hotel at Arlington in the name of the Central Holding Company. Shortly before the first of the year, I told Mr. Conley to get things in shape so that on the first of January (1938) I could turn this property back into my own name. On the 26th day of December I was here and asked Mr. Conley if the books had been fixed up so that I could turn the property back into my own name. He said he hadn't gotten around to it yet. I told him I wanted to have this all done by the first of the year—and he said he would

(Testimony of Edward W. Barnes.)

have it done. I did not return the first of the year, but I came a few days ago—and when I talked to him about this, he said he had run into a snag and he could not get the matter fixed up. He says he then went to you and you told him that you wrote me a letter to Burns, Oregon, on the 18th day of August explaining to me how to handle the situation. He asked for a copy of this letter and you gave him the supposed copy. The original of the copy you gave Mr. Conley I never received at Burns. In fact I did not receive any letter from you after the day that you and Conley took your money out of the Company.

The letter that you gave Conley a few days ago is not in line at all with the instructions you gave us at the time you took your money.

I have carried this thing all the way through according to the way you instructed me and I trust you as an income tax expert, believing you that I could do as you said, eventually, and put this thing into my own name. Now you tell Mr. Conley that things will have to be done differently than you told us in the beginning—and you tell him now that you don't want me to turn the Central Holding Company over to my own name. [130]

You know that I know nothing about corporation taxes and income tax. The money that was left in the Central Holding Company I can account for to the last penny and if there is

(Testimony of Edward W. Barnes.)

any tax to be paid on the \$40,000.00 that you and Conley took out of the Company, you sure will have to pay it.

Mr. Conley tells me that you said everything is alright and that you will make up a statement showing that it is alright.

I will give you until Wednesday, January 26, 1938, to make up this statement and give it to Conley so that I can see it. Furthermore, I want you to give Conley the Company's stock books and minute book.

Yours turly,
(s) E. W. BARNES.

Q. (Mr. Bischoff, continuing): Now, Mr. Barnes, I call your attention to a paragraph in this letter, reading as follows:

“Your know that I know nothing about corporation taxes and income taxes. The money that was left in the Central Holding Company, I can account for to the last penny, and if there is any tax to be paid on the \$40,000.00 that you and Conley took out of the Company, you sure will have to pay it.”

Didn't you refer in this letter to the \$20,000-odd that you now claim was your personal money?

A. Well, you are asking me a question, and if you will keep still I will answer it. You are asking

(Testimony of Edward W. Barnes.)

me if I figured that \$20,000 belonged to the Central Holding Co.?

Q. I am asking you whether your reference to the money that was left in the Central Holding Co., which you said you could account for to the last penny, wasn't a reference to money belonging to the company? Didn't you refer to that \$20,400 as being money belonging to the company, which you now say was your personal money?

A. Yes, and I used it.

Q. That was corporation money?

A. It was my money, and I used it in the Central Holding Co., as he told me to; I used the Central Holding Co. just as a name, as he told me to.

[131]

The \$40,000 referred to in the letter must have been the \$20,000-odd that Jacob received and the \$20,000-odd that Conley received.

AGNES C. JACOB

called by Respondent, testified:

Direct Examination

I am the wife of Robert T. Jacob. I heard of the Central Holding Co. I would say it was between 1936 and 1937. I recall a promise or statement made by Mr. Jacob about June, 1936, that he intended to give some stock of some corporation to me and our daughters. Certificate No. 5 for 24

(Testimony of Agnes C. Jacob.)

shares to Agnes C. Jacob refers to me. On the reverse side my signature appears. It is dated August 10, 1937. I didn't pay any particular attention to the date, but I would say my signature was affixed on that date. I first saw this certificate when I signed it. It came to me by mail from Mr. Jacob at Portland. I was at Seaside with my daughters. Mr. Jacob wrote to sign and send them back. I knew what I was signing. I understood it to be the Welcome Hotel and the shares relating to the shares of stock that Mr. Jacob had promised to give us. The circumstances were the same in all respects as to the children's certificates and mine. They were all signed at the same time. My income tax return for 1937 bears my signature on the reverse side, attested April 15, 1938. I requested of the Collector an extension for filing this return, through Mr. Jacob. There is described on it 24 shares of stock of the Central Holding Co. My husband prepared the statement regarding the stock. He is my legal adviser, and my attorney. He prepared this return. He always prepares it for me. I signed at his request. I asked no questions. I had implicit confidence in his integrity. When signing any document, I usually ask what it is. I knew this was my income tax return. I knew that it had something to do with Central stock.

Return, 1937, received as Respondent's Exhibit T, without objection. [132]

(Testimony of Agnes C. Jacob.)

RESPONDENT'S EXHIBIT T

This Exhibit is the Income Tax Return of Agnes C. Jacob for the calendar year 1937. So far as here material, she reports as gain \$4,750.13, from sale of twenty-four shares of capital stock of the Central Holding Company, which was on the basis of cost \$151.17 and gross sales price of \$4,750.13.

"Gift Tax" return, dated March 13, 1938, bears my signature. I simply signed it at Mr. Jacob's request, also, without inquiring as to the contents or what it was about.

Received as Respondent's Exhibit U, without objection.

RESPONDENT'S EXHIBIT U

This is the Gift Tax Information Return filed by Agnes C. Jacob for the year 1937 in which she reports the gift to her of 24 shares of stock referred to in the Income Tax Return (Exhibit T).

Cross Examination

I never saw this stock certificate before I received it by mail and endorsed it. I held it for a couple of days. I never saw it after I endorsed and sent it to Mr. Jacob. I mailed all the certificates signed by me and my children, as soon as we could.

I never received from the Central Holding Co.,

(Testimony of Agnes C. Jacob.)

James L. Conley, Barnes, or from Mr. Jacob, the sum of \$4,901.30 or any sum of money purporting to come from the Central Holding Co.

I never received any money that represented the sale or other disposition of the stock of Central Holding Co.

Redirect Examination

I signed Income Tax Return because my husband takes care of my legal affairs. I signed at his request and on his advice. I don't remember even now, after looking it over, whether I knew it had reference to Central Holding Co. Stock. [133]

Letter 1/25/38, received as Respondent's Exhibit V, without objection.

RESPONDENT'S EXHIBIT V

The Exhibit is as follows:

January 25, 1938

Mr. E. W. Barnes
4006 N. E. Hoyt St.
Portland, Oregon

Dear Sir:

I have your letter of January 24, 1938, which evidently was written for the express purpose of making evidence for yourself in support of some claim or contention which you intend to make or assert. Your statements as to what transpired between you and the undersigned are clearly erroneous and not in accordance with the facts. Of

(Testimony of Agnes C. Jacob.)

course, I have no knowledge concerning the conversations which you claim to have had with Mr. Conley.

With particular reference to your assertion that you did not receive my letter of August 18, 1937, this is an obvious attempt on your part to lay the foundation for an excuse for your failure to conduct your affairs in accordance with the suggestions contained therein. I know, positively, you received the letter because you talked with me about it on your first return trip from Burns after it was written.

I have not advised Mr. Conley or anyone else that I would make up "a statement showing that it is all right"; nor did I agree to make a statement of similar import, or of any character. I have no statements to make. The transaction wherein you acquired the stock of my family and myself and required my resignation as an *office* and director of the Central Holding Company was concluded upon the basis of figures and statements which were prepared by your own accountant and which were accepted by me without check or correction. Also, all of the funds received by the Company were handled by you and without any information as to where they came from nor how they were spent. The information and data respecting all of these matters undoubtedly is still in your possession.

Obviously I have no knowledge of the transactions of the corporation subsequent to the date when you acquired the stock from my family and

(Testimony of Agnes C. Jacob.)

myself and I submitted my resignation as above set forth.

I note you request that I give Mr. Conley the company's stock book and minute book. While it is true I was Secretary of the Company, I never kept these books in my possession, but they [134] were retained in the office of Mr. Conley, who organized the Company, prepared its articles and by laws, and all documents and minutes of such meetings as were held.

Yours very truly,

ROBT. T. JACOB

RTJ:RN

Registered

Gift Tax Return admitted as Respondent's Exhibit W, without objection.

RESPONDENT'S EXHIBIT W

This Exhibit is the Gift Tax Return filed by Robert T. Jacob for the year 1937 and so far as here material it sets forth a gift of 24 shares of stock of the Central Holding Company to Agnes C. Jacob as follows:

- “1. 24 shares Stock of Central Holding Co.
Love and Affection, Agnes C. Jacob
3206 S. E. Knapp, Portland, Oregon.....\$4,901.30
2. 25 shares stock of Central Holding Co.
College Education, Gwendolyn E. Jacob,
3206 S. E. Knapp, Portland, Oregon..... 5,105.52
3. 25 shares stock of Central Holding Co.
College Education, Shirley May Jacob,
3206 S. E. Knapp, Portland, Oregon..... 5,105.52

(Testimony of Agnes C. Jacob.)

- 4. 25 shares stock of Central Holding Co.
College Education, Beverly Jean Jacob..... 5,105.52''

Attached to the Return is an affidavit reading as follows:

State of Oregon,
County of Multnomah, ss—

I, Robt. T. Jacob, being first duly sworn, depose and say: That failure to file the gift tax returns to which this affidavit is affixed within the time required by law, was not due to any intent to evade taxation or to avoid responsibility therefor, but in accordance with the facts set forth in connection with income tax returns filed concurrently herewith, it is my belief that the gifts were in fact made in 1936. Due to the fact that the stock was purchased in 1936 at a nominal consideration, its value was not sufficient to require the filing of a return in that year, but, should I be mistaken [135] in my position, and if the gift was not in fact consummated until 1937, then its value requires the filing of returns on Forms 709-710. Accordingly same are submitted herewith.

No extension of time for filing was requested as affiant was neither sick nor absent.

ROBERT T. JACOB

Subscribed and sworn to before me this 15th day of April, 1938.

.....

Notary Public for Oregon

My comm. Expires 7-27-41.

(Testimony of Agnes C. Jacob.)

Petition, answer, reply, decision of Board, Dec. 5, 1939 order of Board, April 9, 1940, memorandum, April 9, 1940, decision, April 10, 1940, and order, May 9, 1940, in docket 99161, "Robert T. Jacob, transferee vs. Commissioner of Internal Revenue", copies attached to petitions in the proceeding at bar, offered by petitioners, admitted without objection, Petitioners' Exhibit 6.

PETITIONERS' EXHIBIT No. 6

The petition, answer, decision of December 5, 1939 and order of the Board dated April 9, 1940 are not reproduced because attached to the petition in this cause. The reply, and the memorandum sur order dated April 9, 1940 and the order of the Board dated May 9, 1940 are as follows: [136]

United States Board of Tax Appeals

Docket No. 99161

ROBERT T. JACOB (Alleged Transferee),
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

REPLY

Comes now petitioner above named and, for reply to the further answer of the respondent, admits, denies and alleges as follows:

(Testimony of Agnes C. Jacob.)

1. Admits that respondent made an assessment against Central Holding Company, an Oregon corporation, of deficiencies in respect to the income tax and excess-profits tax in the respective amounts of to-wit: \$3,930.34 and \$1,382.16, together with penalties in the respective amounts of to-wit: \$1,965.17 and \$691.08, for its taxable fiscal year ending June 30, 1937, and except as herein specifically admitted, denies each and every of the allegations set forth in Subdivision (a) of Paragraph 7 of the further answer.

2. Admits that on or about March 3, 1939, respondent made an assessment against the Central Holding Company, an Oregon corporation, of deficiencies in respect of the income tax and excess-profits tax in the respective amounts of to-wit: \$1,875.48 and \$1,098.88 for the taxable fiscal year ending June 30, 1938, and except as herein specifically admitted, denies each and every of the allegations set forth in Subdivision (b) of Paragraph 7 of the further answer.

3. Denies the allegations in Subdivision (c) of Paragraph 7 of the further answer that demand was made in accordance with law upon the Central Holding Company for the payment of the alleged deficiency in tax, penalty, and interest, or that any demand was made at all prior to the assertion by respondent of liability on the part of the petitioner; denies that he has any knowledge or information sufficient to form a belief thereof as to the allegations in said Subdivision (c) that Central

(Testimony of Agnes C. Jacob.)

Holding Company has refused and still refuses to pay the alleged deficiency in tax, penalty, and interest, and alleges the fact to be that respondent did not, at any time prior to the assertion of any transferee liability against the petitioner, take any proceedings to collect the alleged tax, penalty, and interest from Central Holding Company; that during all of the time set forth in the said further answer, Central Holding Company was the owner and in possession of assets more than sufficient, and available, for the payment of the alleged tax, penalty, and interest, but respondent failed and refused to enforce the [137] payment of the alleged tax, penalty, and interest out of such assets at any time prior to the assertion of the alleged transferee liability against petitioner, or at all.

4. Denies each and every of the allegations set forth in Subdivision (d) of Paragraph 7 of the further answer.

5. Denies each and every of the allegations set forth in Subdivision (e) in Paragraph 7 of the further answer and alleges the fact to be that Central Holding Company did not, at the time set forth in said Subdivision (e) or at any time thereafter, become a liquidated corporation; that on August 17, 1937, and at all times thereafter, it continued to be a going corporation engaged in the hotel business; that it continued to be the owner of property and bought, owned and operated hotel property.

6. Denies each and every of the allegations set forth in Subdivision (f) of Paragraph 7 of the

(Testimony of Agnes C. Jacob.)

further answer and alleges the facts to be that at all the times set forth in the further answer, Central Holding Company was the owner and in possession of assets more than sufficient in value, and available, to the satisfaction of the alleged tax, penalty and interest assessed against Central Holding Company, out of which respondent could have enforced payment and satisfaction of the alleged tax, penalty and interest.

7. Denies each and every of the allegations set forth in Subdivision (g) of Paragraph 7 of the further answer.

8. Denies each and every of the allegations set forth in Subdivision (h) of Paragraph 7 of the further answer.

Wherefore, petitioner prays for judgment as demanded in the petition.

S. J. BISCHOFF

Attorney for Petitioner.

I hereby certify that I have prepared the foregoing copy of and have carefully compared the same with the original thereof; and that it is a correct copy therefrom and of the whole thereof.

Attorney for

..... [138]

[Printer's Note: The memorandum sur order dated April 9, 1940, is not reproduced here, as it is part of Exhibit E, attached to the complaint, and is set out at page 44 of this printed record. The order of the Board dated May 9, 1940, is not reproduced here, as it is Exhibit

(Testimony of Agnes C. Jacob.)

F attached to the complaint, and is set out at page 54 of this printed record.]

Stipulation entered in docket 99161 "Robert T. Jacob (transferee) vs. Commissioner", set forth in the memorandum sur order of the Board April 9, 1940, part of Exhibit E attached to the petition, admitted without objection, Petitioners' Exhibit 7.

PETITIONERS' EXHIBIT No. 7

This Exhibit is a stipulation entered of record during the trial of the proceeding before the Board of Tax Appeals, Docket #99161, entitled Robert T. Jacob (transferee) vs. Commissioner of Internal Revenue. The stipulation is set forth in full in the Memorandum Sur Order entered in said proceeding on April 9, 1940, which is a part of Exhibit 6.

[146]

Commissioner's assessment certificate of tax against Petitioners for 1937, showing payment of tax, admitted without objection, Petitioners' Exhibit 8.

PETITIONERS' EXHIBIT No. 8

This Exhibit is entitled "Certificate of Assessments and Payments" from the office of Collector of Internal Revenue to the Commissioner of Internal Revenue, and shows the assessment of the tax

(Testimony of Agnes C. Jacob.)

against the Petitioners herein, in accordance with their returns filed by them for the calendar year 1937 showing payment of the said taxes by the Petitioners.

Revenue Agent's reports refunding taxes paid by Petitioners on 1937 returns, admitted over Respondent's objections, as Petitioners' Exhibit 9.

PETITIONERS' EXHIBIT No. 9

This Exhibit consists of four reports by the Internal Revenue Agent and communication directed to each of the Petitioners herein determining an overassessment in the full amount of the tax paid by each of the Petitioners for the year 1937, which they paid in accordance with their returns for said year. Each of the reports addressed to the Petitioners recite:

“The over assessment is due to an adjustment of the profit on Central Holding Company stock held to be the income of her father * * * Taxpayer is held to have received proceeds from liquidation of Central Holding Company's stock as a gift rather than gift of stock certificate.”

Income Tax Return of Robert T. Jacob, 1937, received Petitioners' Exhibit 10, without objection.

(Testimony of Agnes C. Jacob.)

PETITIONERS' EXHIBIT No. 10

This Exhibit consists of the Income Tax Return of Robert T. Jacob for the calendar year 1937. In this Return, Robert T. Jacob reports as revenue, gain of \$19,792.19, resulting from disposition of 100 shares of stock of the Central Holding Company. Cost or other basis being \$629.91 and gross sale price being \$20,422.10. Attached to said return is a statement in writing which is set forth in full in the opinion of the Board.[147]

Commissioner's report of assessment and payment of tax by Robt. T. Jacob for 1937 received, Petitioners' Exhibit 11, without objection.

PETITIONERS' EXHIBIT No. 11

This Exhibit is entitled "Certificate of Assessments and Payments" issued by Collector of Internal Revenue to the Commissioner of Internal Revenue, showing the assessment of tax against Robert T. Jacob in accordance with his return for the year 1937, and the payment of said tax by him.

ROBERT T. JACOB

called by Petitioners, testified:

Direct Examination

I have been an attorney and tax consultant for

(Testimony of Robert T. Jacob.)

about 20 years; husband of Agnes C. Jacob; father of Shirley, Beverly and Gwendolyn Jacob. Was a stockholder, officer and an organizer of Central Holding Co. with Conley and Barnes. Was to have $\frac{1}{3}$, or 100 shares of stock when company organized. It was organized for purchase of Welcome Hotel, Burns, Oregon. In contemplation of organization of that corporation, I promised to dispose of its stock to the members of my family. Told them we were planning to acquire the property, and I would give each a portion of the stock. At the inception, a certificate for 100 shares was issued to me; certificates to Conley and Barnes for $26\frac{1}{2}$ and $73\frac{1}{2}$ shares each. I did not transfer the 100 shares that were issued to me at that time to members of my family. The reason was, I provided the funds for the cash payment; Robert S. Farrell supplied \$15,000 and I supplied the balance. Farrell imposed as a condition to providing \$15,000, I should retain control. My agreement with Barnes and Conley was we should each hold one-third of the stock; to meet Farrell's requirements, each of the other incorporators delivered me $26\frac{1}{2}$ shares. I retained those shares with my 100 until Farrell was paid.

The fire occurred July 15, 1937. Immediately thereafter, Conley went to Burns; on his return, he stated Barnes was already making plans to rebuild the hotel, and [148] wanted to acquire the stock of Conley and myself. Conley stated he informed Barnes he would turn over his stock, and wanted to know if I would. I said I was desirous of getting

(Testimony of Robert T. Jacob.)

out and would turn my stock over to Barnes. Barnes came to Portland, a few days later and told me Conley would turn over his stock to him; stated he wanted to continue the operation; that he planned to rebuild the hotel, and he had to be on the ground to make estimates of cost; he was planning a new hotel, and wanted to keep the corporation alive because it would be easier to obtain loans and refinance construction of the building, if he did so, and wanted to know if he could take me out and acquire my stock if I didn't want to go ahead. I said I didn't and then he said he would take me out if I would transfer my stock to him. At that time, he told me he was making arrangements with the First National Bank of Portland for a loan of \$60,000; That he had made arrangements with the Hines Lumber Company to supply the lumber and materials at wholesale price, for completing the hotel. He stated he could get all the money he needed to finish the Pondsosa Hotel.

It was then agreed he was to take me out, and he was to continue the corporation. I did not know how the insurance money was received or handled. Payment to me of \$2,400.00 was made after Barnes and I had come to a conclusion that I was to transfer my stock to him. After I received \$2,422.10, I gave no part of it to Agnes C., Shirley, Beverly or Gwendolyn Jacob. I didn't put any of it in a special fund for them. I utilized it for my own purposes.

Sometime between July 26 and July 31, I had

(Testimony of Robert T. Jacob.)

Miss Alstrom prepare certificates of one share to me, 24 to Mrs. Jacob and 25 to each of the girls. I took them into Conley's office and handed them to Barnes, who signed them. I retained one certificate and some time after August 1st, sent the others to Seaside, Oregon for endorsement by various members of the family. They were endorsed as of August 10, and returned. I retained them in my possession until August 17, when I delivered them to Barnes. I remember very distinctly that at the time I was paid \$18,000, I handed these five stock certificates, with my resignation as treasurer and director to [149] Barnes. I did not participate in the adjustment of the insurance loss, which resulted in the last distribution. I knew approximately when it was received. I was informed by Barnes and Conley August 17 to come to First National Bank and I would be paid some \$18,000. I went there, met Barnes and Conley, was handed \$18,000, surrendered the stock certificates with my resignation to Barnes, took the \$18,000 and left. Both Conley and Barnes were there when I left. I gave no part of that money to any member of my family, Agnes C., Beverly, Shirley or Gwendolyn Jacob. I did not give them any equivalent of the money, either in the form of bank deposits or other equivalents. I did not set it aside or deposit it in any trust fund or other account for them. I used it for my personal needs. I never conveyed any property of any kind to any of them in lieu of that money.

When I made gift returns for members of my

(Testimony of Robert T. Jacob.)

family, I embodied my reasons in statement attached to the return. There was a question in my mind as to the completion of the gift, and I wanted to comply with whatever requirements were necessary, so I made my return and under it I made the explanation.

My reason for reporting the same money both by myself for the full amount and by members of my family for the proportionate amounts, is covered by the statement attached to the return. I wasn't sure whether the gift had been completed, or what the legal effect was; and wanted to make a full disclosure and have the matter adjusted and determined. The statement I referred to is attached to my income tax return for 1937.

My reason for not giving my family the money as I intended to give them an interest in a going concern in the form of stock. The question of making them gifts of cash was not within my purpose, and I felt that would be unwise.

Cross Examination

Practicing attorney in Portland about 20 years. Member of Oregon Bar, engaged on income tax matters before the Bureau of Internal Revenue, Board and Federal Courts. Was in office of Collector at Portland, about 5 years. Authorized to practice before [150] the Bureau 1924, admitted to practice before the Board and the Bar in 1926.

I promised to give my family 100 shares of stock about June, 1936. Loan to Mr. Farrell was repaid during July, 1937, when I caused certificates to be

(Testimony of Robert T. Jacob.)

prepared in accordance with the intention of making the gift to my family.

Under the arrangements with Mr. Farrell, I was to retain the stock and control the corporation. I considered that required me to own the stock in my own right. Never considered I was the beneficial owner of Barnes and Conley's stock. Never considered I was the beneficial owner of the stock promised my family, but it was my purpose to consider my family beneficial owners.

After the fire on July 15, 1937, Barnes stated he wanted to acquire my stock and wanted to continue the operation of the corporation. It is not a fact that Barnes didn't want to continue the corporation. He told me specifically he wanted to keep the corporation alive, particularly for the convenience in borrowing money. When Barnes said he wanted to acquire the stock, neither he nor Conley mentioned wanting to continue the corporation for saving taxes, but Conley said Barnes wanted to rebuild, and wanted both of us to turn our stock over to him.

There was no arrangement between Barnes, Conley and me to divide the cash. Barnes and Conley acquired control and went ahead without consulting me anyway, disposed of the assets and collected the insurance, and handled the matters as they saw fit. Barnes said he wanted to take me out. I am positive Barnes used the phrase he wanted to "take me out", and I interpreted the transaction as constituting a sale by me of the stock to Barnes.

(Testimony of Robert T. Jacob.)

Barnes sold some timber in 1937 for \$11,000 cash. I didn't know that the payments I received came from the proceeds of the insurance. I assumed they were but had no way of knowing. The money Barnes gave me was part of his agreement to take me out of the corporation, and I did not know that Conley or Barnes was getting an equal amount. The fact that at the moment I delivered the shares to Barnes, I received \$18,000, led me to interpret it as payment for my stock. [151]

Barnes was in Burns on the 18th. He left on the afternoon of the 17th for Burns, after I delivered the stock and my resignation to him.

The Member: How do you know that?

The Witness: I recall his saying that he was going to Burns as quickly as he could, and I recall Mr. Conley coming in with respect to his share either on the afternoon of the 17th or the afternoon of the 18th; and I addressed a letter to Mr. Barnes in Burns on the afternoon of the 17th. I did not see Mr. Barnes leave for Burns or elsewhere on the 17th. I only know that he said on the morning of the 17th that he was anxious to get matters straightened out, and that he had to go that afternoon.

I testified on direct examination that none of the funds that I received was paid to any of the Petitioners; that in no shape, form or fashion did any of these funds reach those individuals, or were made available to them. Under those circumstances, I prepared the income tax returns of my wife and

(Testimony of Robert T. Jacob.)

daughters and reported the same thing both ways because there was a question in my mind. There was attached to the gift tax return an affidavit and a statement attached to the income tax return indicating I had a question in my mind as to whether a gift had been made or not. That was the only explanation I had to make, I think it is complete.

I prepared income tax return of Central Holding Co. for fiscal year June 30, 1937, and the paper attached to it.

Thereupon, questioning by Mr. Pigg continued.

Q. I call your attention to a paragraph in the statement. Your Honor, may I have your indulgence to read that paragraph? The first paragraph of this statement attached to the return reads as follows:

“We severally owned and operated the Welcome Hotel, at Burns, Oregon, from July 1, 1936 to July 15, 1937, on which latter date the hotel was completely destroyed by fire. Due to the fact that the hotel was filled with guests, it was necessary for the clerk to act quickly in notifying the guests in vacating the premises, the fire having broken out about 4:30 in the morning. By the time the guests had been notified and assisted [152] from the building, the smoke had so completely filled the lobby and the office, that it was impossible to save any of the records, all of which, including the day books, expense bills, receipted bills, corre-

(Testimony of Robert T. Jacob.)

spondence and other records, were all completely burned.”

That ends the quotation.

A. Yes.

Q. Isn't it a fact that at the time you filed the return under oath, you knew that to be not true?

A. No, that is not a fact. All the records that were in the hotel were destroyed.

Q. Isn't it a fact that the accounting records of the hotel were kept in your office in Portland?

A. Yes, a tabulation of the receipts and disbursements were. Those are the only records that we kept in my office, with the exception of weekly sheets that were forwarded, that is, the bi-monthly receipts that were forwarded, and from which the bookkeeper prepared the tabulation of receipts and disbursements.

Q. Isn't it a fact that the receipted bills and the invoices were copied off of the day book sheets that were kept in Burns, Oregon, and they were sent to you in Portland, Oregon, under your instructions, twice a month?

A. There were tabulations of receipted expenditures forwarded to my office twice a month under a system of accounting which was installed by Harry Byers, a certified accountant. These sheets, as they were received, were transmitted to the bookkeeper, and she prepared reports from them; and she prepared the cash book records for them. The Clerk on duty is the man who sent them in.

(Testimony of Robert T. Jacob.)

He was under Mr. Barnes. Barnes was the active manager at Burns. Mr. Barnes was the directing head of the organization at Burns.

Q. Mr. Jacob, isn't it a fact that you know now, and that you knew then, when the 1937 return was filed, that none of the records of Central Holding Co., excepting perhaps, or with the exception of some data with respect to the last two weeks preceding the fire, were destroyed, which had nothing to do whatsoever with the preparation of the return?

A. No, that is not a fact. That is, all the records, the checks and the vouchers, and all the bank account records,—and that is the basis for the compiling of an income tax.

Q. I will hand you a group of papers, which are invoices and receipted bills and tabulations, and various other sheets which speak for themselves, and they bear various dates in 1937 and 1936, and I will ask you whether or not it is a fact that those are the receipts and receipted bills and statements and papers which you required to be sent from Burns?

A. I have no way of knowing what was forwarded to my office. I didn't keep the books at all, but simply turned over the envelopes containing the statements and other data to the bookkeeper for entry.

Q. (Mr. Pigg, continuing): Are you inferring by that, they were not received by your office?

(Testimony of Robert T. Jacob.)

A. No, I don't know that they were not, and I don't know that they were.

Q. Do you testify that they were not?

A. No, I don't testify that they were not. I say I don't know.

Q. With your knowledge of the accounting affairs of the corporation, wouldn't you think that they were the records that were received at your office from Burns?

A. I don't recall. I have not seen them for some two or three or four years. That letter dated August 6, 1936, bears my signature, addressed to Mr. E. W. Barnes, care of Welcome Hotel, Burns, Oregon. It relates to the affairs of the Welcome Hotel.

Mr. Pigg: I offer it in evidence.

Mr. Bischoff: We object to is as incompetent, irrelevant and immaterial; and improper cross examination; it is an attempt to inject into the case a collateral issue, which will take considerable time to develop and rebut, for which we are not [154] now prepared. The subject matter involves solely the income tax of the corporation itself, as to which there is no issue now. It was an issue in a previous proceeding, and there is a long record dealing with the matter, which indicates how extensive an examination is necessary to understand what happened with respect to the records, which cannot be dealt with under the guise of an unexpected cross examination; and it would be highly prejudicial to the Petitioners, and they would be jeopardized by

(Testimony of Robert T. Jacob.)

entering into an investigation of an issue that is tendered by the attorney for the Government by such a question. It certainly has nothing to do with any issue that has been suggested by the pleadings.

Mr. Bischoff: All of this deals solely with the reason for the making of the return in 1937 for the corporation itself in the manner in which it was made, which, of itself, is an involved issue which must have to be tried so as to present the proper picture to the Court, and it cannot be done by cross examination. Since it is absolutely immaterial, and since that matter has already been tried out, it is certainly highly prejudicial and improper.

Mr. Pigg: This letter relates to the very transactions that are involved here. It is a letter addressed by this witness to Mr. Barnes, one of the preceding witnesses in this case. It deals with the question I have been examining the witness about, relating to the manner in which the records of Central Holding Co. were kept, and when, where and by whom. It is offered for the purpose of impeaching the testimony of this witness. It is not offered for showing anything with reference to the manner in which the income tax was filed in 1937, but is only offered for the purpose of impeaching the testimony of this witness.

The Member: The objection is overruled.

Mr. Bischoff: Note an exception.

Letter received as Respondent's Exhibit Z.

(Testimony of Robert T. Jacob.)

RESPONDENT'S EXHIBIT Z

August 6, 1936

“Mr. E. W. Barnes,
c/o Welcome Hotel,
Burns, Oregon

Dear Ed:

Your letter of the 4th regarding the hotel reports: It will be in order for Mr. Heath to make the reports the 10th, 20th and last of the month.

I have not forwarded forms for the reason that I have not yet decided the exact manner in which I desire these made. I am studying the present set-up with the view to a more comprehensive statement for each period and do not care to have the forms printed until I know what I want. Therefore, instruct Mr. Heath to forward the reports as heretofore until otherwise advised. I am enclosing herein statement from the Title & Trust Co. covering the cost of the abstract and ask that you forward check to their order for at least \$100.00. I observe that you have made payment to the Harney County and also have paid Caldwell's charge.

I notice in the petty cash receipts, an item of \$20.00 to you for “carpenter and miscellaneous supplies \$20.00.” In connection with this and the checks which have been issued to you personally, it will be necessary that we keep a

(Testimony of Robert T. Jacob.)

detail, else the federal government will not recognize the deductions. In the matter of miscellaneous expenditures it would be far better for these to be paid by the manager, both from the standpoint of accounting and for its effect upon the manager. As to your own personal expenses, these should be detailed as in the case of the itemized bills submitted by Mr. Conley and myself. Your statement should show the date of the expenditures and who for, whether for gasoline, meals, car storage, oil, or what-not. It will be absolutely necessary that this be done in order that the deduction be allowed by the Treasury Department in making our income tax returns, and the saving in tax on such items will be very substantial.

Yours very truly,"

Schedule marked and received in evidence as Respondent's Exhibit CC over Petitioners' objections.

Not reproduced because deemed not material on this appeal.

I executed under oath the affidavit Exhibit DD.

Mr. Bischoff: I will object to that as incompetent, irrelevant and immaterial, and improper cross examination. It has nothing to do with the issue presented here. [156]

The Member: The objection is overruled.

Mr. Bischoff: Note an exception, please.

The Member: Noted.

(Testimony of Robert T. Jacob.)

Affidavit received as Respondent's Exhibit
DD.

RESPONDENT'S EXHIBIT DD

State of Oregon

County of Multnomah—ss.

I, Robt. T. Jacobs, being duly sworn, depose and on oath set forth in response to request of Revenue Agent Geo. L. Machin, the facts respecting the acquisition and gift of the stock of the Central Holding Company to Agnes C. Jacob, Gwendolyn E. Jacob, Shirley May Jacob and Beverly J. Jacob, and in order to set forth the facts as clearly as possible they will be detailed in narrative form:

Some time during the month of May, 1936, I approached James L. Conley and E. W. Barnes, who advised that the said Barnes held an option to purchase what was known as the "Welcome Hotel" located in Burns, Oregon. The information given me was that the said Barnes had acquired the option some two years previously and that under its terms a cash payment of \$15,000 was required; that if I would procure said \$15,000 I would be given a one-third interest in the equity that would be acquired in said property. Thereafter, and on or about May 26, 1936, I approached Mr. Robt. S. Farrell and after fully discussing the matter and after agreeing to further secure the said Farrell by giving him a mortgage upon certain properties then owned by me, in addition to giving a mortgage upon the Burns property, he agreed to furnish said money.

(Testimony of Robert T. Jacob.)

However, as will be seen from the letter received from Mr. Farrell, under date of May 27, 1936, one of the conditions precedent to his making the advance was that the undersigned retain 51% of the equity in the property described. The following is an exact copy of said letter:

“May 27, 1936

“Mr. Robt. T. Jacob,
Portland, Oregon.

Dear Sir:

“Confirming our verbal understanding, I will loan you and your associates the sum of \$15,000.00 on the Welcome Hotel at Burns, Oregon, upon the following conditions:

“(1) That deed to the property will be delivered in escrow showing title in the undersigned, subject to a maximum mortgage of \$27,000.00 bearing interest at 5½% per annum, interest payable semi-annually, and providing that no payment is to be made on the principal of said first mortgage for a period of eighteen months after the execution of said mortgage. [157]

“(2) That title policy will be issued showing title in the undersigned subject only to the first mortgage as set out in paragraph numbered (1).

“(3) That you own at least 51% of the equity in the property above described.

“(4) That you deliver to me a first mort-

(Testimony of Robert T. Jacob.)

gage on your property at Bonneville and Seaside.

“I will execute to you and your associates, an option to repurchase said hotel property upon the payment, at the rate of \$1,000.00 per month, of the money advanced by me under this agreement, it being understood that the contract will provide for the payment to me of interest at the rate of 8% per annum upon the unpaid balances of said contract from month to month.

“You are advised that upon your written instructions, I will place the money in escrow in the First National Bank of Portland, Oregon to be paid through the Title & Trust Company upon delivery to them of the documents as provided above.”

“Yours truly,
(Sgd) ROBT. S. FARRELL”

After receipt of this letter, the matter was discussed with said Barnes and Conley and an agreement was reached whereby I was to hold the required interest until the mortgage of the said Farrell had been fully paid and satisfied.

After the arrangement above referred to was completed with the said Farrell, the said Barnes notified D. V. Kuykendall, the business agent for the owner of the property, that he was ready to

(Testimony of Robert T. Jacob.)

perform under the terms of his contract, but upon refusal of the said Kuykendall to transfer the property to Barnes, he thereupon threatened suit for specific performance. Thereafter, the said Kuykendall came to Portland, and the undersigned and the said Conley had a meeting with the said Kuykendall, who stated that he did not recognize Barnes' contract but that he was ready, willing, and able to transfer said property upon the payment of \$18,000.00 and the assumption of taxes and liens outstanding. Thereupon the undersigned personally furnished \$3,000.00 and with the \$15,000.00 procured from the said Farrell, the purchase of the property was concluded.

As was set forth in statement attached to the income tax return filed for the year 1937, I promised the shares of stock to the members of my family very shortly after I acquired them, it being the expectation that the mortgage to the said Farrell would be repaid within a short time and the returns from the operation of the hotel would provide a substantial income, and I expressed the hope at that time that these returns would provide a fund for college educations for my daughters. This matter was discussed with Conley and Barnes, who made a similar distribution of their holdings. [158]

At the time of filing my return for 1936, I considered the question of filing a gift tax return but determined that one was not required: first, because the stock at the time of the promised gift had no value in excess of its cost, in view of the fact that

(Testimony of Robert T. Jacob.)

Kuykendall, from whom the property was purchased, did not recognize the option of the said Barnes, but it was acquired upon the basis of a new bargain between a seller, willing, but not forced to sell, and a buyer, willing, but not forced to buy; second, because the gift had not been completed by the physical delivery of the certificates.

The Burns hotel representing the property owned by the Central Holding Company, burned on July 15, 1937. Shortly thereafter the said Barnes and Conley arranged for a loan at the United States National Bank at Portland, Oregon, from the proceeds of which the mortgage of the said Farrell was paid on July 27, 1937. Thereupon the undersigned delivered to the said Barnes and Conley the shares of stock which were being held by the undersigned under an agreement to return them when the said Farrell mortgage and interest thereon had been fully satisfied, and which then gave the said Barnes and Conley the ownership of 66 2/3% of the stock, and corresponding control of its affairs. Immediately upon the release of this stock, and satisfaction of the obligation imposed by the said Farrell, I caused certificates of stock to be issued to the members of my family. They were at the time in Seaside, Oregon, and the certificates after issue were forwarded to them at that place. In the mean time, the said Barnes had insisted that the stock be turned over to him and an agreement had been reached to deliver it to him. In pursuance of this arrangement, on August 10, 1937, each of the

(Testimony of Robert T. Jacob.)

owners of the certificates endorsed the same, had their signatures witnessed and then the shares were forwarded to me for delivery to Barnes upon receipt of the money therefor. On August 18, the final payment of \$18,000 was received by the undersigned in cash, in the safety deposit vaults of the First National Bank of Portland, and at that time the undersigned delivered to the said Barnes 100 shares of the stock of the Central Holding Company, represented by certificates as follows:

Certificate No. 1, Robert T. Jacob, 1 share

Certificate No. 5, Agnes C. Jacob, 24 shares

Certificate No. 6, Gwendolyn E. Jacob, 25
shares

Certificate No. 7, Shirley May Jacob, 25
shares

Certificate No. 8, Beverly J. Jacob, 25 shares

At the time of delivery of said shares for the said moneys, I also delivered to the said Barnes a letter as follows:

“August 17, 1937

“Mr. E. W. Barnes, President
Central Holding Company
Portland, Oregon

Dear Ed:

“Inasmuch as you have acquired the stock of the undersigned, Mrs. Jacob, and the girls, I have no further interest in the Central Holding Company, and accordingly, submit my

(Testimony of Robert T. Jacob.)

[159] resignation as director and secretary, effective at once."

"Very truly yours

(Sgd) ROBT. T. JACOB"

RTJ:RN

Subscribed and sworn to before me this 29 day of November, 1938.

.....
Notary Public for Oregon
My commission expires:....



I executed under oath the affidavit, Exhibit EE.
Mr. Pigg: I will offer this document in evidence, your Honor.

Mr. Bischoff: May I have the same objection on the last exhibit?

The Member: The objection is overruled. It will be marked in evidence as Respondent's Exhibit EE.

Mr. Bischoff: Note an exception.

The Member: Noted.

Affidavit, admitted as Respondent's Exhibit EE.

RESPONDENT'S EXHIBIT EE

State of Oregon

County of Multnomah—ss.

AFFIDAVIT

I, Robert T. Jacob, being first duly sworn, depose

(Testimony of Robert T. Jacob.)

and on oath set forth at the request of Geo. L. Machin, Internal Revenue Agent, the following facts respecting the sale of myself and family of the stock in the Central Holding Company.

During the month of May, 1936, I was informed that one E. W. Barnes held an option to purchase the "Welcome Hotel" at Burns, Oregon, for a cash payment of \$15,000 and the assumption of certain taxes and liens, and I was offered by the said Barnes and James L. Conley a one-third interest in the equity to be acquired, in consideration of my procuring a loan of \$15,000 to make the cash payment. Arrangements were made with one Robt. S. Farrell to supply said \$15,000, but he required the undersigned to retain 51% of the equity in the [160] property until his mortgage and interest had been fully paid.

During the month of June, 1936, the Central Holding Company, an Oregon corporation, was organized, with 300 shares of no-par stock, and this corporation, on July 1, 1936, acquired the "Welcome Hotel" at Burns, Oregon. In order to meet the conditions imposed by the said Farrell, at the time of the incorporation of the above named company, and to comply with the agreement with the said Barnes and Conley, each of them assigned to affiant 26½ shares of their stock in said Central Holding Company, on condition that this stock should be returned to them when the Farrell loan was liquidated.

At the time the corporation acquired said prop-

(Testimony of Robert T. Jacob.)

erty, said Barnes took complete charge as manager of the hotel and operated the same until July 15, 1937, collecting the rents, paying the expenses, and keeping the operating records, when a fire occurred which destroyed the building and its contents, with the exception of the foundation, walls, and the heating plant (housed in a separate wing of the building), which remained intact, undamaged.

Prior to the time of the acquisition of the above referred to property, the said Conley and Barnes had been associated together for many years in various enterprises and also in the relationship of attorney and client, and their relations were very intimate and close. During the time the hotel was operated by the said Barnes, I complained of his extravagances and other matters which resulted in friction and unpleasantness between us, and as a result there was little communication between us. When the fire occurred I was neither consulted nor permitted to enter into the negotiations or the transactions in connection with the settling up of the company's affairs.

Almost immediately after the fire occurred, the said Conley and Barnes arranged to borrow money at the United States National Bank of Portland, Oregon, to pay the balance to Robt. S. Farrell, and for other purposes of which I was not advised. The first intimation I had that such a loan was negotiated was when I was requested as secretary to sign the note and resolution authorizing the loan.

(Testimony of Robert T. Jacob.)

The loan was obtained by them so that they could reacquire the stock which they had transferred to me as aforesaid, and between them obtained and exercised control. The payment to the said Farrell was made on or about July 27, 1937, some 12 days after the fire occurred, from the proceeds of said loan. Upon the repayment of Farrell's loan, demand was made upon me by the said Barnes and Conley for the surrender to them of the shares which I held as aforesaid. These shares were surrendered and the control of the company's affairs then vested completely in the said Barnes and Conley. As above stated, I was not consulted as to what was being done in connection with the corporation's affairs and I knew nothing of the details thereof. As to the insurance funds which were realized by reason of the fire, I knew nothing of the details. Conley and Barnes conducted all negotiations in adjusting the fire insurance losses.

Shortly after the fire, I was approached by the said Barnes who stated that it was his purpose to rebuild the Welcome Hotel, but that he could not do so unless he could acquire all of the stock of the said Central Holding Company. He thereupon approached me as to the acquisition of the stock of myself and family and I informed him that it would be surrendered upon the payment to us of \$21,500, and he agreed to buy the stock for that amount. [161] Nothing more was said regarding this proposition until on or about August 12, 1937, when Barnes handed me \$2,422.10, and stated that

(Testimony of Robert T. Jacob.)

the balance would be paid later. On August 16, 1937, he informed me that he had had a statement prepared by his auditor, John McGrath, which statement as I recall, showed that all bills of the company had been paid and the said Barnes stated that he would pay us a balance of \$18,000 for our stock holdings in the said Central Holding Company, whereupon I advised him that this amount was over \$1,000 less than the amount we had agreed to accept. He argued that by his carrying on the company, rebuilding the hotel and continuing its operations it would affect a saving in taxes to me which should be treated as a part of the consideration for the transfer of said stock, and after considerable argument this proposal was agreed to. On August 17, 1937, I was advised by the said Barnes to meet him and Mr. Conley in the basement of the First National Bank of Portland, Oregon. This I did and in the safety deposit department of the bank he paid me \$18,000 in currency, at which time I delivered to the said Barnes certificates of stock of the Central Holding Company as follows:

Certificate No. 1, Robt. T. Jacob, 1 share.

Certificate No. 5, Agnes C. Jacob, 24 shares

Certificate No. 6, Gwendolyn E. Jacob, 25
shares

Certificate No. 7, Shirley May Jacob, 25
shares

Certificate No. 8, Beverly J. Jacob, 25 shares

In response to a previous request I had prepared

(Testimony of Robert T. Jacob.)

a resignation as as officer and director and I executed and delivered to him at that time the following letter:

“August 17, 1937

“Mr. E. W. Barnes, President,
Central Holding Company
Portland, Oregon

Dear Ed:

“Inasmuch as you have acquired the stock of the undersigned, Mrs. Jacob and the girls, I have no further interest in the Central Holding Company, and accordingly submit my resignation as director and secretary, effective at once.”

“Very truly yours

ROBT. T. JACOBS”

RTJ:RN

Prior to the final closing of the matter, the said Conley, Barnes and the undersigned, discussed the matter of tax which might accrue to the Central Holding Company and during the discussion the said Conley requested that for future reference I embody my views in a letter. On August 18, 1937, I wrote and forwarded to the said Barnes at Burns, Oregon, a letter of which the following is a true copy, to-wit:

(Here follows letter which is Petitioner's Exhibit 4.) [162]

Nothing further transpired in connection with the matter until January 3, 1938, when I was re-

(Testimony of Robert T. Jacob.)

quested by Mr. Conley to furnish him with a copy of my letter of August 18, 1937, and said copy was furnished together with the following letter of transmittal:

“January 3, 1938

“Mr. James L. Conley
1312 Public Service Bldg.
Portland, Oregon

Dear Jim:

“As per your request, I am enclosing you herein a copy of my letter of August 18, 1937, written to Mr. Barnes, President of the Central Holding Company, and forwarded to him at Burns, Oregon. As stated to you, he mentioned having received the letter, but I am glad to forward the copy as per your request.

“As stated to you further, the matter of dissolving the corporation is one which is not material to me for the reason that Mr. Barnes, personally, acquired my family's stock and the matter of liquidation would be entirely up to him.”

“Yours very truly
ROBT. T. JACOB”

RTJ:RN

Thereafter and on January 25, I received from the said Barnes the following letter:

(Here follows Petitioners' Exhibit No. 5.)

To which on the same date I replied as follows:

(Here follows Respondent's Exhibit V.)

(Testimony of Robert T. Jacob.)

I have no knowledge as to what disposition Mr. Conley or members of his family who owned stock made of their stock, but I know that Mr. Conley last acted as secretary of the corporation and he executed a mortgage on behalf of the corporation as such secretary, on December 15, 1937, upon Lots 8 to 15, Block A Denney's Addition to Arlington, Oregon, occupied by the Arlington Hotel which the corporation purchased on that date. This was a purchase-money-mortgage executed when the corporation bought that property. Prior to the acquisition of the hotel property at Arlington the corporation acquired a hotel and other property at Hines, Oregon, in Harney County, which is a suburb of Burns, Oregon, and I am informed that said property at Hines, Oregon, was traded in as part payment of the Arlington Hotel Property.

Also in the August 29th, 1937, issue of the Sunday Oregonian, appeared a cut of a hotel building in Section 2, Page 1, Volume LVI, under the headline "Welcome Hotel at Burns to be rebuilt at cost of \$200,000.00". The following excerpts were from the accompanying article: [163]

"The Burns property is owned by E. W. Barnes, who pioneered the timber development of that area. * * *

" * * * Construction will get under way about September 15, it was announced here yesterday by Elmer O. Berglund, Superintendent of Avondale Construction Co., in charge of the reconstruction program."

(Testimony of Robert T. Jacob.)

The corporation with Barnes acting as the president and manager operated and continued the hotel in Arlington continuously until September 12, 1938, at which time the Central Holding Company conveyed the hotel property to E. W. Barnes and Olive G. Barnes, but the corporation was continued in existence.

Thus the corporation continued in existence and continued to function as such from and after the time that my family and I sold the stock to the said Barnes, and said corporation was during all of said time engaged in the business for which it was organized, owning, managing, and conducting hotel property.

(Sgd) ROBT. T. JACOB

Subscribed and sworn to before me this 30th day of November, 1938.

(Sgd) E. M. BETZNER

Notary Public for Oregon

My Commission Expires:

2/18/42

It absolutely is not a fact that the whole transaction under which or by which I surrendered my stock certificates to Barnes in the way the evidence shows, and under which I received this \$20,000 in the manner the evidence shows, was calculated and designed by me merely to shift whatever tax might be due to the corporation and escape any tax to myself. Petitioners' Exhibit 4 contains instructions or the information I gave him respecting the handl-

(Testimony of Robert T. Jacob.)

ing of the monies which were obtained from the insurance funds.

Thereupon the following ensued:

Q. Now, as a tax practitioner of 20 years' experience and training, didn't you know then and don't you know now that the advice and instructions given in that Petitioners' Exhibit 4 were unworthy of a practitioner of repute?

A. No, it is not unworthy.

Mr. Bischoff: At this time I move to strike from the record all the cross examination pertaining to the preparation and the making of the income tax return of Central Holding Co. for the fiscal year ending June 30, 1937, and with respect to the,—[164]

The Member: June 30, what year?

Mr. Bischoff: June 30, 1937, and all the testimony with respect to the records and documents that were produced in connection with that examination on the ground that such examination is wholly immaterial, irrelevant and incompetent, and has nothing to do with any evidence developed on direct examination, nor is it proper evidence for the purpose of impeachment of the witness, and on the ground that it tendered an entirely collateral issue which the Petitioners in this case were not able at this time to properly meet.

The Member: The motion will be denied.

Mr. Bischoff: Note an exception.

The Member: An exception will be noted.

Petitioners offered testimony of Gregory Con-

(Testimony of Robert T. Jacob.)

nor before the Board proceeding document 99161,
"Robert T. Jacob, Transferee, v. Commissioner."
Received over objection, Pet. Exh. 12

PETITIONERS' EXHIBIT No. 12

This Exhibit consists of testimony of Gregory Conner referred to above. Printing omitted because not deemed material on this appeal.

Recross Examination

I did not hand Barnes corporation return for fiscal year 1937, left it in Conley's office. The only thing I declined to sign is the statement that is in evidence. I was secretary-treasurer of the corporation, but not on September 15. I resigned August 17. It was not in my judgment, my duty and responsibility to check and verify the accuracy of the reports that were sent to Portland, to me from Burns. I didn't make an audit. My purpose was to have an audit at the end of each year; the books were opened by a CPA, and I had nothing to do with auditing the books.

A certified copy of a proclamation of the Governor of Oregon dissolving Central Holding Co. by gubernatorial proclamation on January 6, 1941 for nonpayment of annual license fee, was received without objection, marked as Respondent's Exhibit FF.

[Endorsed]: T. C. U. S. Filed Feb. 2, 1943. [165]

[Title of Court and Cause.]

PRAECIPE FOR RECORD

To the Clerk of the Tax Court of the United States.

You are hereby requested to prepare, certify and transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit with reference to petition for review heretofore filed by the petitioner in the above-entitled cause a transcript of record in the said case prepared for transmitting as required by law and by the rules of said Court and to include in said transcript of record the following documents or certified copies thereof, to-wit:

1. The docket entries in all proceedings before the Tax Court of the United States, formerly the Board of Tax Appeals.

2. Pleadings before said Court.

(a) Petitions for redetermination.

(b) Answer of Respondent.

(c) Reply.

3. Findings of fact and opinion of the Board of Tax Appeals.

4. The decision of the Board.

5. The petition for review filed by the petitioner herein.

6. The statement of evidence with exhibits.

7. Proof of service of the petition for review and the notice of filing the same.

8. Designation of Record. [166]

9. All orders extending time to file the transcript and docket the cause in the Circuit Court of Appeals.

10. This praecipe with proof of service thereof.

11. All other papers, records, documents and orders filed or of record in said cause except the transcript of testimony and exhibits for which statement of evidence is substituted.

W. J. BISCHOFF

Attorney for Petitioner

[Endorsed]: T. C. U. S. Filed Feb. 25, 1943.

[167]

The Tax Court of the United States

Docket No. 108032

AGNES C. JACOB,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

AFFIDAVIT OF SERVICE

State of Oregon,

County of Multnomah—ss.

I, S. J. Bischoff, being duly sworn on oath depose and say that I served a true and correct copy of the praecipe for record attached hereto by mailing the same to J. P. Wenchel, counsel for the respondent, addressed to him at the Internal Revenue Building, Washington, D. C.; that said copy of praecipe addressed as aforesaid with postage paid thereon was by me deposited in the United States

Post Office at Portland, Oregon, for mailing to the said J. P. Wenchel.

[Seal] (s) S. J. BISCHOFF,

Subscribed and sworn to before me this 22nd day of February, 1943.

(s) DOROTHY ORR,

Notary Public for Oregon.

My commission expires: 10/23/45.

[Endorsed]: T.C.U.S. Filed Feb. 25, 1943. [168]

[Title of Court and Cause.]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD

I, B. D. Gamble, clerk of The Tax Court of the United States, do hereby certify that the foregoing pages, 1 to 168, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praeceptum in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 2d day of March, 1943.

[Seal]

B. D. GAMBLE,

Clerk, The Tax Court of the
United States.

ABSTRACT OF RECORD IN THE CASES OF

Docket Nos. 108033, 108034, 108035

Docket No. 108033

SHIRLEY MAY JACOB (Alleged Transferee),
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 108034

BEVERLY JEAN JACOB (Alleged Transferee),
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 108035

GWENDOLYN E. JACOB (Alleged Transferee),
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

[Printer's Note: Docket Entries in the above cases are the same as set forth in the case of Agnes C. Jacob.]

The pleadings in the above entitled cases are the same as in the case of Agnes C. Jacob, Appellant,

vs. Commissioner of Internal Revenue, Appellee, except that appellants are designated as daughters of Robert T. Jacob and the transferee liability asserted against the appellants is the sum of \$2805.92 income tax and \$2299.60 excess profits tax, total \$5105.52.

The four issues were consolidated for trial, involve the same fund and the same issues.

[Title of Board and Causes.]

DECISION

The Decisions in the cases of Shirley May Jacob vs. Commissioner of Internal Revenue, Beverly Jean Jacob vs. Commissioner of Internal Revenue, Gwendolyn E. Jacob vs. Commissioner of Internal Revenue are the same as in the case of Agnes C. Jacob, except that the amounts set forth in said Decision are \$2805.92 and \$2299.60.

[Title of Board and Causes.]

PETITION FOR REVIEW OF UNITED STATES BOARD OF TAX APPEALS DECISION

The Petitions for Review in the cases of Shirley May Jacob, vs. Commissioner of Internal Revenue, Beverly Jean Jacob vs. Commissioner of Internal Revenue, and Gwendolyn E. Jacob vs. Commissioner of Internal Revenue and the Notices of Filing of Petitions for Review in said cases are the same as

the Petition for Review in the case of Agnes C. Jacob, except that the petitioners are referred to therein as the daughters of Robert T. Jacob and the amounts of liability asserted against them are \$2805.98 and \$2299.60.

[Endorsed]: No. 10390. United States Circuit Court of Appeals for the Ninth Circuit. Agnes C. Jacob, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Shirley May Jacob, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Beverly Jean Jacob, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Gwendolyn E. Jacob, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of Record. Upon Petitions to Review Decisions of the Tax Court of the United States.

Filed: March 15, 1943.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10390

AGNES C. JACOB,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

SHIRLEY MAY JACOB,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

BEVERLY JEAN JACOB,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

GWENDOLYN E. JACOB,

petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

MOTION FOR AN ORDER AUTHORIZING
CERTIFICATION AND FILING OF A
CONSOLIDATED RECORD

Come now the petitioners above named and move this court for an order authorizing and directing the Clerk of the Tax Court of the United States to prepare, certify and file in this court a single consolidated record upon the petition for review filed by the above-named petitioners and for consolidation of the four cases in this court and for the pleading of a consolidated record in this court.

This motion is made for the following reason.

The pleadings before the Tax Court of the United States in all of the four proceedings referred to above are identical except that Agnes C. Jacob is described as the wife in one petition and the other three petitioners are described as daughters of Robert T. Jacob. All of the petitioners are claimed by respondent to be the transferees of the same identical fund. The issues of fact and law raised by the pleadings are identical in all the cases. The cases were consolidated for trial before the Tax Court of the United States and were tried simultaneously on a single record.

The court below rendered a single opinion. The issues to be tried in this court are identical in all four cases. The pleadings and records in each of those cases are very voluminous and no useful purpose could be served by reproducing all of the pleadings in the four proceedings in four separate records. Such a procedure would unnecessarily encumber the record and subject the parties to un-

necessary expense and the parties and the Clerk of the court below to unnecessary labor.

Dated February 25, 1943.

S. J. BISCHOFF,
Attorney for Petitioners
Above-named.

[Title of Circuit Court of Appeals and Cause.]

ORDER FOR CONSOLIDATION

The petitioners above named having filed a motion herein for an order permitting the filing of a consolidated record on the petitions for review in said proceedings and directing the Clerk of The Tax Court of the United States to prepare, certify and file herein a single consolidated record and for consolidation of the causes in this court and for the pleading of a consolidated record in this court and it appearing that the consolidation of the proceedings and records can be made without prejudice to the rights of any of the parties and is in the interest of economy of time, labor and expense, it is

Ordered that the Clerk of The Tax Court of the United States be and he hereby is authorized and directed to prepare, certify and file in this court a single consolidated record on the petitions for review filed in the above-entitled proceedings; that the four proceedings be docketed in this court upon the filing of such consolidated record; that the proceedings be consolidated in this court for trial and that a single consolidated record be printed in this court.

Dated the 2nd day of March, 1943.

FRANCIS A. GARRECHT

Judge.

[Endorsed]: Filed Mar. 2, 1943. Paul P. O'Brien, Clerk.

[Endorsed]: Re-filed Mar. 15, 1943. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF PARTS OF RECORD
TO BE PRINTED

To the Clerk of the above entitled Court:

The appellants above named hereby designate for printing the following portions of the record to wit:

1. The Petition in the case of Agnes C. Jacob omitting the following parts thereof:

(a) Verification (page 16).

(b) The portion of the deficiency letter (page 17) dated April 8, 1941, addressed to Agnes C. Jacob, beginning with the phrase "in accordance with" and ending with the phrase "whichever is earlier."

(c) The portion of Exhibit A (page 20) beginning with the phrase "in accordance with" and ending with the phrase "whichever is earlier."

(d) The portion of Exhibit A beginning with the heading "Taxable Year Ended June 30, 1937" (page 22) and ending with the line "Deficiency of income tax . . . \$1,875.48" (page 27).

(e) The portion of Exhibit B (page 28) beginning with the paragraph numbered "1." to and including the paragraph "(o)" (page 30), also portions of Exhibit B beginning with paragraph "5" (page 30) to the end of page 35.

(f) The caption and the portion of Exhibit C (page 36) beginning with the paragraph numbered "1." and ending with the paragraph numbered "3." on the same page.

(h) The portion of Exhibit C beginning with the paragraph numbered "5" (page 36) and ending with line five on page 39.

(i) The portion of Exhibit C beginning with the phrase "Wherefore, it is prayed" on page 39 to the end of that page.

(j) The portion of Exhibit D (page 40) which states the title of the Board and the title of the cause.

(k) All of Exhibit E (page 41.)

(l) All of Exhibit F (page 42).

2. The Answer in the case of Agnes C. Jacob vs. Commissioner (page 43) omitting the caption and verification and signatures.

3. The Reply in the case of Agnes C. Jacob vs. Commissioner (page 53) omitting the caption and signatures.

4. Omit printing of the pleadings in the cases of
 Shirley May Jacob vs. Commissioner
 Beverly Jean Jacob vs. Commissioner
 Gwendolyn E. Jacob vs. Commissioner

and insert in lieu thereof the following statement:

Abstract of Record in the Cases of
Shirley May Jacob vs. Commissioner
Beverly Jean Jacob vs. Commissioner
Gwendolyn E. Jacob vs. Commissioner

The pleadings in the above entitled cases are the same as in the case of Agnes C. Jacob, Appellant, vs. Commissioner of Internal Revenue, Appellee, except that appellants are designated as daughters of Robert T. Jacob and the transferee liability asserted against the appellants is the sum of \$2805.92 income tax and \$2299.60 excess profits tax, total \$5105.52.

The four cases were consolidated for trial, involve the same fund and the same issues.

5. Appellants' Statement of the Evidence, omitting therefrom the portions of the exhibits that are stricken therefrom.

6. The findings of Fact and Opinion of the United States Board of Tax Appeals (pages 127 to 153 inclusive).

7. The Decision of the United States Board of Tax Appeals (omitting the caption) in the case of Agnes C. Jacob vs. Commissioner of Internal Revenue.

(a) Omit printing of decisions in the cases of Shirley May Jacob vs. Commissioner of Internal Revenue, Beverly Jean Jacob vs. Commissioner of Internal Revenue, and Gwendolyn E. Jacob vs. Commissioner of Internal Revenue, and substitute therefor the statement as follows:

“The Decisions in the cases of Shirley May Jacob vs. Commissioner of Internal Revenue, Beverly Jean Jacob vs. Commissioner of Internal Revenue, Gwendolyn E. Jacob vs. Commissioner of Internal Revenue are the same as in the case of Agnes C. Jacob, except that the amounts set forth in said Decisions are \$2805.92 and \$2299.60.”

8. Petition for Review in the case of Agnes C. Jacob vs. Commissioner of Internal Revenue (pages 155 to 162).

9. Notice of Filing of Petition for Review in the case of Agnes C. Jacob vs. Commissioner of Internal Revenue.

10. Omit the printing of the Petitions for Review and Notice of Filing of Petitions for Review in the cases of Shirley May Jacob vs. Commissioner of Internal Revenue, Beverly Jean Jacob vs. Commissioner of Internal Revenue, and Gwendolyn E. Jacob vs. Commissioner of Internal Revenue, and substitute in place thereof the statement as follows:

“The Petitions for Review in the cases of Shirley May Jacob vs. Commissioner of Internal Revenue, Beverly Jean Jacob vs. Commissioner of Internal Revenue, and Gwendolyn E. Jacob vs. Commissioner of Internal Revenue and the Notices of Filing of Petitions for Review in said cases are the same as the Petition for Review in the case of Agnes C. Jacob, except that the petitioners are referred to therein as the daughters of Robert T. Jacob and the amounts of liability asserted against them are \$2805.92 and \$2299.60.

11. Designation of Record to be prepared by the Clerk of the Tax Court of the United States.
12. The Docket Entries.
13. Statement of the Points on which appellants intend to rely on the appeal.
14. This Designation of Portions of Record to be Printed.
15. Motions and Orders for extensions of time to docket appeals if any there be.

S. J. BISCHOFF,
Public Service Building
Portland, Oregon

Service of a copy of the foregoing designation of parts of record to be printed is hereby admitted and accepted this 26th day of February, 1943.

J. P. WENCHEL
Chief Counsel, Bureau of Internal Revenue,
Attorney for Respondent on Review.

[Endorsed]: Re-filed Mar. 15, 1943. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Causes.]

COUNTERDESIGNATION BY RESPONDENT
OF PORTIONS OF THE RECORD TO BE
PRINTED.

To the Clerk of the above entitled Court:

The respondent above named hereby designates in writing the following additional parts of the record which he deems material and which he desires

should be printed as a part of the record upon review:

1. The portions of Exhibit B to the petition (before the Board of Tax Appeals) of Agnes C. Jacob beginning with paragraph "5" to the end of that paragraph.

2. The portion of Exhibit C to the petition (before the Board of Tax Appeals) of Agnes C. Jacob beginning with paragraph numbered "5" to the end of the prayer for relief, appearing in Exhibit C.

3. All of Exhibits E and F to the petition (before the Board of Tax Appeals) of Agnes C. Jacob unless the same are included and printed verbatim in the Statement of the Evidence which is being printed as a part of the record herewith.

SAMUEL O. CLARK, JR.

Assistant Attorney General.

Service of a copy of the foregoing Counterdesignation by Respondent of Portions of the Record to be Printed is hereby admitted and accepted thisday of March, 1943.

Counsel for Petitioners on
Review.

[Endorsed]: Filed Mar. 10, 1943. Paul P. O'Brien, Clerk.

[Endorsed]: Re-filed Mar. 15, 1943. Paul P. O'Brien, Clerk.